

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

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## NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

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1. **Committee's Official Designation (Title):**

National Environmental Justice Advisory Council

2. **Authority:**

This charter renews the National Environmental Justice Advisory Council (NEJAC) in accordance with the requirements of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The NEJAC is in the public interest and supports the Environmental Protection Agency (EPA) in performing its duties and responsibilities.

3. **Objectives and Scope of Activities:**

The NEJAC will provide independent advice and recommendations to the Administrator about broad, crosscutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice. The major objectives will be to provide advice and recommendations about EPA efforts to:

- a. Integrate environmental justice considerations into Agency programs, policies and activities
- b. Improve the environment or public health in communities disproportionately burdened by environmental harms and risks
- c. Address environmental justice to ensure meaningful involvement in EPA decision-making, build capacity in disproportionately-burdened communities, and promote collaborative problem-solving for issues involving environmental justice
- d. Strengthen its partnerships with other governmental agencies, such as other Federal agencies and state, tribal, or local governments, regarding environmental justice issues
- e. Enhance research and assessment approaches related to environmental justice

4. **Description of Committees Duties:**

The duties of the NEJAC are solely to advise the EPA.

5. **Official(s) to Whom the Committee Reports:**

The NEJAC will provide advice and recommendations, and report to the EPA Administrator through the Office of Environmental Justice, Office of Enforcement and Compliance Assurance.

6. **Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Environmental Justice, Office of Enforcement and Compliance Assurance.

7. **Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of the NEJAC is \$295,600, which includes 1.5 person-years of support.

8. **Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all of the meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. **Estimated Number and Frequency of Meetings:**

The NEJAC expects to meet approximately two (2) to four (4) times a year. Meetings may occur approximately once every three to six months, as needed and approved by the Designated Federal Officer (DFO), or his/her designee. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the NEJAC will hold open meetings, unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the NEJAC.

10. **Duration and Termination:**

The NEJAC will be examined annually and will exist until the EPA determines the Council is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed in accordance with Section 14 of FACA.

**11. Member Composition:**

The NEJAC will be composed of approximately 27 members who will serve as Representative members of non-federal interests, Regular Government Employees (RGE), or Special Government Employees (SGE). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from among, but not limited to: community-based groups; industry and business; academic and educational institutions; state and local governments; indigenous organization and Federally-recognized tribal governments and Indigenous groups; and non-governmental and environmental groups, as deemed appropriate.

**12. Subgroups:**

EPA, or the NEJAC with EPA approval, may form subcommittees or work groups for any purpose consistent with this charter. Such subcommittees or work groups may not work independently of the chartered committee and must report their proposed recommendations and advice to the chartered NEJAC for full deliberation and discussion. Subcommittees or work groups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the EPA.

**13. Recordkeeping:**

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

8/8/2014  
Agency Approval Date

AUG 20 2014  
GSA Consultation Date

SEP 12 2014  
Date Filed with Congress

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

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## FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

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### 1. Committee's Official Designation (Title):

Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel

### 2. Authority:

This charter renews the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The FIFRA SAP is in the public interest and supports the U.S. Environmental Protection Agency (EPA) in performing its duties and responsibilities. The original Panel was created on November 28, 1975, pursuant to Section 25(d) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended by Public Law 94-140, Public Law 95-396, and Public Law 96-539. In accordance with this statute, the Panel terminated on September 30, 1981. It was reestablished by the Administrator pursuant to the Federal Advisory Committee Act (FACA) and Section 21(b) of FIFRA on April 25, 1983, and then reauthorized as a statutory committee by amendment to the FIFRA dated December 2, 1983 (Public Law 98-201). Under FIFRA (Public Law 98-201), the statutory Panel terminated on September 30, 1987. It was administratively reestablished on October 1, 1987 by the Administrator pursuant to FACA until reauthorized as a statutory Panel by amendment to the FIFRA, dated October 25, 1988 (Public Law 100-532). Section 104 of the Food Quality Protection Act of 1996 (Public Law 104-170) establishes a Science Review Board consisting of sixty scientists who shall be available to the Scientific Advisory Panel on an ad hoc basis to assist in reviews conducted by the Panel.

### 3. Objectives and Scope of Activities:

FIFRA SAP will provide comments, evaluations, and recommendations on pesticides and pesticide-related issues as to the impact on health and the environment of regulatory actions.

The major objectives are to provide comments, evaluations, and recommendations on:

- a. The impact on health and the environment of matters arising under Sections 6(b), 6(c) and 25(a) of FIFRA
- b. Analyses, reports and operating guidelines to improve the effectiveness and quality of scientific analyses made by EPA
- c. Analyses Guidelines to improve the effectiveness and quality of scientific testing and of data submitted to EPA
- d. Methods to ensure that pesticides do not cause "unreasonable adverse effects on the environment," as defined in Section 2 (bb) of FIFRA



- e. Major scientific studies (whether conducted by EPA or other parties) supporting actions under Sections 6(b), 6(c), and 25(a) of FIFRA
- f. Major pesticide and pesticide-related scientific studies and issues in the form of a peer review

4. **Description of Committees Duties:**

The duties of the FIFRA SAP are solely to provide advice to the EPA.

5. **Official(s) to Whom the Committee Reports:**

The FIFRA SAP will report to the EPA Administrator through the EPA's Assistant Administrator for the Office of Chemical Safety and Pollution Prevention (OCSPP).

6. **Agency Responsible for Providing the Necessary Support:**

The EPA will be responsible for financial and administrative support. Within the EPA, this support will be provided by the Office of Chemical Safety and Pollution Prevention (OCSPP).

7. **Estimated Annual Operating Costs and Person Years:**

The estimated annual operating cost of FIFRA SAP is \$1,940,000, which includes 7.0 person-years of support.

8. **Designated Federal Officer:**

A full-time or permanent part-time employee of the EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. **Estimated Number and Frequency of Meetings:**

The FIFRA SAP expects to meet approximately six (6) to eight (8) times a year. Meetings may occur approximately every one and a half (1 ½) to two (2) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, FIFRA SAP will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the FIFRA SAP.

**10. Duration and Termination:**

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

**11. Member Composition:**

As required by FIFRA, the FIFRA SAP will be composed of seven members, including the Chairperson, and members will be selected from nominees provided by the National Institutes of Health (NIH) and the National Science Foundation (NSF). Members will serve as Special Government Employees (SGE) or Regular Government Employees (RGE). In selecting members, EPA will consider candidates on the basis of their professional qualifications to assess the effects of pesticides on health and the environment. To the extent feasible, the panel membership will include representation of the following disciplines: toxicology, pathology, environmental biology, and related sciences (e.g., pharmacology, biotechnology, bio-chemistry, bio-statistics).

**12. Subgroups:**

The EPA, or FIFRA SAP with EPA's approval, may form FIFRA SAP subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered FIFRA SAP for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

**13. Recordkeeping:**

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

9/22/2014  
Agency Approval Date

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Date Filed with Congress

**Interim Report to Congress**  
**on**  
**Endangered Species Act Implementation in Pesticide Evaluation Programs**

U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, National Marine  
Fisheries Service, and the U.S. Department of Agriculture

November 2014

### *Summary of Report*

The National Academy of Sciences' report, entitled "Assessing Risks to Endangered and Threatened Species from Pesticides" was released on April 30, 2013. It contained recommendations on scientific and technical issues related to pesticide consultations under the Endangered Species Act (ESA) and the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Since then the Environmental Protection Agency (EPA), the National Marine Fisheries Service (NMFS) and the Fish and Wildlife Service (FWS) (i.e., the Services) have worked to implement the recommendations. Joint efforts to date include: collaborative relationship building between EPA, NMFS, FWS, and the Department of Agriculture (USDA); clarified roles and responsibilities for the EPA, the Services, and USDA; agency processes designed to improve stakeholder engagement and transparency during review and consultation processes; two joint agency workshops resulting in interim approaches to assessing risks to ESA-listed species from pesticides; a plan and schedule for applying the interim approaches to a set of pesticide compounds; and multiple workshops and meetings with stakeholders to improve transparency as the pesticide consultation process evolves. As a result of the ongoing collaborative efforts, EPA and the Services are moving forward with developing and applying their interim approach to pesticide consultations, have completed some consultations affording species protections, and developed work products that describe changes to processes intended to streamline consultations and provide ample opportunity for stakeholder engagement as early as possible.

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## Purpose of the Report

This report is intended to provide Congress with a description of the approaches and actions taken by the Environmental Protection Agency (EPA), the Fish and Wildlife Service (FWS), the National Marine Fisheries Service (NMFS), and the Department of Agriculture (USDA) (hereafter referred to as the Agencies) to 1) implement the recommendations of National Academy of Sciences' (NAS) National Research Council (NRC) report, entitled, "Assessing Risks to Endangered and Threatened Species from Pesticides" (hereafter referred to as the NRC's study), 2) ensure public participation and transparency during implementation of the recommendations from the NRC's study, and 3) minimize delays in integrating applicable pesticide registration and registration review requirements with species and habitat protections.

## Background

On February 7, 2014, President Obama signed into law the Agricultural Act of 2014 (P.L. 113-79). As provided in Section 10013 of Title X – Horticulture, on the Endangered Species Act (ESA) Implementation in Pesticide Evaluation Programs, Congress required this interim report to be delivered 180 days after the Bill was signed into law and a final report in one year. The intent expressed in this provision is to keep the Agencies moving forward as they develop processes that will make it possible for EPA to comply with the ESA in a manner that maximizes resources and minimizes delays of pesticide registration and reregistration decisions under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). In addition, the provision is intended to encourage meaningful public participation, and reemphasize that all ESA-mandated Reasonable and Prudent Alternatives (RPAs) are technologically and economically feasible, that ESA-mandated Reasonable and Prudent Measures (RPMs) are necessary and appropriate, and that the Agencies have ensured public participation and transparency in the development of RPAs and RPMs.



## Legal Authority

EPA regulates the distribution, sale, and use of pesticides under FIFRA. Under Section 3 of FIFRA, subject to limited exceptions, a pesticide must be registered by the EPA prior to its distribution or sale. Before EPA may register a pesticide under FIFRA, the applicant must show, among other things, that using the pesticide according to specifications "will not generally cause unreasonable adverse effects on the environment."<sup>1</sup>

If EPA concludes that the pesticide, together with its accompanying labeling and any terms and conditions, will not cause unreasonable adverse effects on the environment, EPA grants the registration and the labeling provisions approved by EPA become the enforceable use directions for the pesticide product. Post-registration, EPA reviews and reevaluates a pesticide every 15 years to determine whether it continues to meet the FIFRA registration standard.<sup>2</sup> EPA has long stated that it will use the registration review process to address its ESA obligations for pesticide registrations and intends to do so by conducting nationwide scale effects determinations.

Under section 7(a)(2) of the ESA, all federal agencies have responsibility to insure that any action authorized, funded, or carried out by that agency is not likely to jeopardize the continued existence of any federally listed endangered or threatened species (listed species), or result in the destruction or adverse modification of designated critical habitat. Therefore, under ESA, EPA must insure that its activities in administering FIFRA are not likely to jeopardize the continued existence of any federally listed threatened or endangered species or adversely modify designated critical habitat.

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<sup>1</sup> FIFRA defines the term "unreasonable adverse effects on the environment" to mean: "(1) any unreasonable risk to man or the environment, taking into account the economic, social, and environmental costs and benefits of the use of any pesticide, or (2) a human dietary risk from residues that result from a use of a pesticide in or on any food inconsistent with the standard under section 408 of the Federal Food, Drug, and Cosmetic Act."

<sup>2</sup> Due to concerns that much of the safety data underlying pesticide registrations becomes outdated and inadequate, FIFRA Section 4 requires that registrations be reviewed every 15 years and requires EPA to reregister all pesticides that were registered before 1984. The goal is to update labeling and use requirements and reduce potential risks associated with older pesticide active ingredients -- those first registered when the standards for government approval were less stringent than they are today. This comprehensive reevaluation of pesticide safety in light of current standards is critical to protecting human health and the environment.

Regulations implementing Section 7 of the ESA require that federal agencies initiate “consultation” with the appropriate Service(s) on certain actions that “may affect” ESA-listed species or designated critical habitat. The appropriate Service depends on the agency’s action, the ESA-listed species potentially affected by that action, and the Service responsible for administering consultations for the listed species potentially affected. The Services conclude a formal consultation by issuing a Biological Opinion that addresses the federal agency action considered during consultation. The appropriate Service determines whether the proposed action assessed in the Biological Opinion is likely to jeopardize the continued existence of any ESA-listed species, or destroy, or adversely modify the designated critical habitat of such species. If the FWS, or NMFS, determines from its assessment that a proposed action is likely to jeopardize the continued existence of the species, or destroy or adversely modify critical habitat, it must provide the federal agency with RPAs to the action, if any exist, that the Service determines will preclude likely jeopardy and destruction or adverse modification of critical habitat. If the relevant Service concludes that take (*i.e.*, harass, harm<sup>3</sup>, pursue, hunt, shoot, wound, kill, trap, capture, or collect any threatened or endangered species) will not violate ESA section 7(a)(2), the Service provide the federal agency with an incidental take statement (ITS). The ITS identifies the amount or extent of take, RPMs that minimize the impact of take, and implementing terms and conditions. Incidental take that occurs when the agency action is conducted in compliance with the implementing terms and conditions is exempt from statutory or regulatory prohibitions of take that would otherwise apply.

It should be noted that USDA has no formal role in the consultation process. USDA’s role is to provide pesticide use and usage data as well as information on agricultural production practices. The National Agricultural Statistics Service (NASS) is providing assistance with the appropriate use of the Crop Data Layer and other geospatial information related to the location of agricultural crops.

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<sup>3</sup> Harm is further defined in 50 CFR Part 222



## National Academy of Sciences Study Implementation

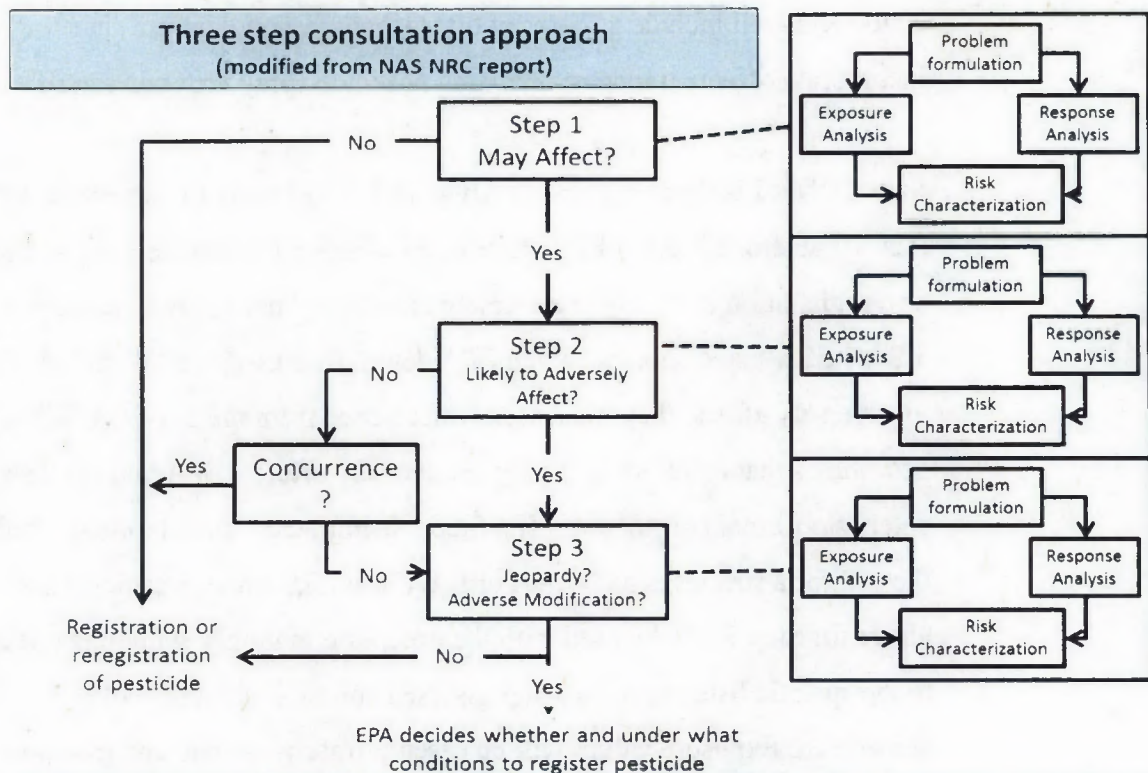
On March 10, 2011, the Agencies requested that the NRC convene a committee of independent experts. "The committee was asked to evaluate EPA's and the Services' methods for determining risks to ESA-listed species posed by pesticides and to answer questions concerning the identification of the best scientific data, the toxicological effects of pesticides and chemical mixtures, the approaches and assumptions used in various models, the analysis of uncertainty, and the use of geospatial data."<sup>4</sup> Specifically, the committee was asked to evaluate the protocols used by EPA and the Services to review the best available scientific methods for projecting these effects and consider options for the development of any additional methods that are likely to be helpful, to consider the scientific information available to assess the potential effects of mixtures and inert ingredients, to consider the selection and use of uncertainty factors to account for lack of data and how the choice of those factors affects estimates of uncertainty, and to advise on the use of models to assist in analyzing the effects of pesticide use and on the use of geospatial information and datasets in assessing the risk to endangered and threatened species from pesticides.

On April 30, 2013, the NRC provided their recommendations to the Agencies in the form of a report<sup>5</sup>. Upon receipt of the study report, the Agencies began a joint review and discussion of the recommendations and developed a plan for their implementation. As part of the implementation plan, the Agencies determined which recommendations could be implemented immediately, which recommendations would take longer to implement, and which recommendations required additional interagency discussions. The Agencies are implementing the NRC study's recommended three-step consultation approach, shown below.

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<sup>4</sup> Assessing Risks to Endangered and Threatened Species from Pesticides (National Research Council, 2013; [http://www.nap.edu/catalog.php?record\\_id=18344](http://www.nap.edu/catalog.php?record_id=18344))

<sup>5</sup> Ibid.



NOAA FISHERIES



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- Step 1 ('No Effect/May Affect' determination) - EPA makes the "no effect/may affect" determination independently of the Services at Step 1. If EPA determines that a pesticide's registration, or reregistration, will have "no effect" on ESA-listed species it may move forward with a pesticide's registration, or reregistration, without consulting with the Services. If EPA determines that a pesticide's registration, or reregistration "may affect" ESA-listed species, the pesticide's potential impact on ESA-listed species must be considered under Step 2. The 'No Effect/May Affect' determination will largely be based on the overlap of the action area with the species' ranges and designated critical habitats (i.e., any species or critical habitat that overlaps with the action area will be considered a 'May Affect'). The action area will be defined by identifying pesticide use areas (i.e., the pesticide use footprint) based on currently registered labeled uses (i.e., the Action). In addition, the

action area will include a footprint that extends beyond the use sites to incorporate off-site transport including pesticide spray drift and runoff.

- Step 2 ('Not Likely to Adversely Affect (NLAA)/Likely to Adversely Affect (LAA)' determination) – EPA determines whether a pesticide's registration, or reregistration is "likely to adversely affect", or "not likely to adversely affect" ESA-listed species. When EPA determines that an effect is "not likely to adversely affect" they must seek concurrence from the Services. When EPA determines that an effect is "likely to adversely affect," EPA and the Services enter into formal consultation, and Step 3 is initiated. To determine whether the call for a species is an NLAA or LAA, a similar process as described above for Step 1 will be used with the exception that only endpoints relevant to the specific listed species being assessed and their habitats will be considered. Exposure values will be based primarily on fate and transport model results that assess the range of labeled uses of the pesticide (rates, methods). For aquatic exposures, PRZM/EXAMS, AgDRIFT and AGDISP will be used to predict exposure in generic habitats, referred to as bins, relevant to groups of listed species with similar habitat preferences. Exposure results for the bin most appropriate for the species being assessed will be used. For terrestrial exposures, TerrPlant, AgDRIFT, AGDISP and T-REX will be used. In this step (i.e., Step 2), a refined version of T-REX that accounts for species-specific characteristics (e.g., body size, diet, etc.), will be used.
- Step 3 ('Jeopardy/No Jeopardy' determination and "Adverse Modification/No Adverse Modification" on effects to designated critical habitat(s) determination) – For all of those species/critical habitat designations found to warrant determinations of LAA, the relevant Service(s) will determine 'jeopardy' or 'no jeopardy' for species and 'adverse modification' or 'no adverse modification' for designated critical habitat. These determinations will be based on a weight-of-the-evidence approach that evaluates species and habitat risk hypotheses and associated lines of evidence. A variety of tools



will be employed to assess the population and species responses including but not limited to population modeling (when appropriate data are available on species and habitat use).

The Agencies are holding a series of internal workshops to develop procedures and methodologies to address NRC study's recommendations that cannot be implemented immediately, but that are considered to be short-term, or long-term goals. The Agencies conducted their first workshop during the week of August 5, 2013, in which interim approaches for estimating risks to listed species from pesticides were developed jointly by the Agency scientists. In keeping with the NRC's study recommendations, the result is a streamlined consultation process that relies on best available data to inform an ecological risk assessment based on robust quantitative and qualitative analyses. The white paper describing the interim approaches entitled, "Interagency Approach for Implementation of the National Academy of Sciences Report" (11/13/2013) is available at the following website: <http://www.epa.gov/oppfead1/endanger/2013/nas.html>

The white paper explains in more detail the procedures and methodologies that will be used in Steps 1, 2, and 3, including how a pesticide's "action area"<sup>6</sup> will be determined in Step 1 and what constitutes effects thresholds<sup>7</sup> in Steps 1 and 2. The white paper emphasizes the importance of using quantitative analysis whenever possible and explaining the rationale supporting a qualitative analysis, and states that the ECOTOX toxicology database<sup>8</sup> supplemented with information from the Services<sup>9</sup> will generally constitute best available data for toxicity. The white paper explains that as part of

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<sup>6</sup> Action area means all areas to be affected directly or indirectly by the Federal action and not merely the immediate area involved in the action (50 CFR § 402.02). (<http://www.fws.gov/endangered/what-we-do/faq.html>)

<sup>7</sup> Effects thresholds are derived from available, scientifically valid toxicity data. They are designed to be conservative and to represent the risk management goals of the ESA, which are focused on effects to an individual's fitness.

<sup>8</sup> ECOTOX is a comprehensive database, which provides information on adverse effects of single chemical stressors to ecologically relevant aquatic and terrestrial species. ECOTOX includes more than 40,000 test records covering 5,900 aquatic and terrestrial species and 8,400 chemicals. The primary source of ECOTOX data is the peer-reviewed literature with test results identified through comprehensive searches of the open literature (<http://cfpub.epa.gov/ecotox/>).

<sup>9</sup> This may include peer-reviewed studies not included in the ECOTOX database and other relevant toxicity studies including those generated by city, county, state, and federal entities.

implementing Steps 1 and 2, predictive models will be used to estimate pesticide concentrations in soil, air, and water and environmental exposures to them, as well as targeted and ambient water quality monitoring. Formulated products with more than one active ingredient, tank mixes, and environmental mixtures will largely be considered qualitatively.

The white paper also identified several follow-up tasks related to the NRC study's recommendations that are considered to be short-term, or long-term goals that will be developed further by the Agencies, specifically:

1. Develop a common approach to weight of evidence (WOE) analyses, using quantitative and qualitative information for making NLAA/LAA (and jeopardy and adverse modifications of critical habitat) decisions.
2. Share information about the FIFRA Endangered Species Task Force (FESTF) database and the U.S. Fish and Wildlife Services' Environmental Conservation Online System (ECOS) and discuss whether/how these tools can be used as part of the interim approach to identify species and define species' ranges and critical habitats. Within ECOS, there are various modules that the agencies are exploring to gather or store species information, including the Information, Planning, and Conservation System (IPaC), the Critical Habitat Portal, and the Threatened and Endangered Species System (TESS). These three modules include various scales of geospatial data for species ranges (e.g., county-level, areas of influence) and critical habitat.
3. Describe "bins" (i.e., type of water body) for aquatic species for use in Steps 2 and 3 for exposure modeling. The water body may vary by depth, width, and flow; it may be static, flowing, estuarine, intertidal, subtidal, or offshore marine.
4. Develop guidance on the construction and use of species sensitivity distributions (SSDs).

5. Discuss proposal for defining agricultural pesticide use areas by aggregation of crop categories in the Cropland Data Layer (CDL) produced by USDA.

The interim approaches, including the follow-up tasks, were presented to the public during a workshop on November 15, 2013. Presentation materials from the stakeholder workshop are available at the following website:

<http://www.epa.gov/oppfead1/endanger/2013/nas.html>

The Agencies have been working continuously since the release of the NRC's study on all of these areas, simultaneously. The expectation is that these additional approaches can be incorporated into the risk assessment process on a "day forward approach". This means that our shared scientific approaches, once fully developed, will be applied to pesticide reviews from that point in time and going forward rather than reworking assessments and decisions already completed.

The Agencies held a second internal workshop during the week of May 5, 2014 to continue development of joint interim approaches for assessing risks to ESA-listed species from pesticides, and to deliberate on the follow-up tasks identified in the white paper. As a result of this workshop, the Agencies have developed a draft annotated outline for EPA's ESA-listed species' risk assessments, or biological evaluations.

Progress towards implementing the NRC study's recommendations considered to be short-term or long-term goals includes:

1. Weight-of-evidence analysis being developed – Developing a common approach to weight-of-evidence analysis that includes an explanation of how all of the information (quantitative and qualitative) was used to draw and support conclusions. Agency scientists have drafted guiding principles that will be further developed in concert with the national-level consultations discussed below. EPA and the Services are working together to develop a

WOE approach that can be used for the species-specific determinations, and are planning on using WOE in Step 2. We have not yet had discussions on using WOE at Step 3.

2. Geospatial data being defined - Identifying sources of geospatial data to map the locations of ESA-listed species, and their designated critical habitat and ranges, and to map crop locations for use in defining a pesticide's action area (Step 1 in the NRC study). The Agencies are pursuing sources of this information considered "best available data" through various sources, including two pesticide industry task forces: Federal Endangered Species Task Force (FESTF) and Generic Endangered Species Task Force (GESTF).
3. The Agencies met with FESTF on November 25, 2013 and again on March 27, 2014. During the November meeting, FESTF representatives provided the Agencies with an overview of their databases and sources of their data. During the March meeting, FESTF representatives provided a more detailed comparison of ESA-listed species' locations from individual sources, and demonstrated an information management system through which species location maps from individual sources could be compiled, contrasted, and compared. FESTF has begun delivery of species range maps that include aggregated available geospatial information (e.g., including critical habitat information from ECOS) to the FWS field offices for use in the development of vetted listed species ranges for the initial pesticide consultations. Once the field offices have completed their review and refinement of the range maps, they will be sent to FWS Headquarters for review prior to delivery to EPA/FESTF as appropriate.
4. The Agencies met with GESTF on January 15, 2014 to discuss their efforts to map crop locations using NASS CDL data. Based on the information and understanding of available data and information on ESA-listed species locations, designated critical habitat and range, and cropping patterns gained from these meetings, the Agencies have drafted an approach for establishing

the action area and determining whether the action may affect ESA-listed species or designated critical habitat, i.e., Step 1 of the NRC's study recommendations. Currently, GESTF is investigating approaches to mapping non-agricultural crops. GESTF expects to share their findings with the EPA by the end of the end of 2014.

5. Exposure modeling being developed - EPA is developing a nationwide pesticide aquatic exposure model that defines the magnitude and extent of pesticide concentrations in water that is spatially explicit and captures seasonal and yearly variations. The outputs of this spatial aquatic model will provide a better definition of the aquatic spatial footprint of pesticide exposures in the action area. EPA just completed a pilot version of the model for the Midwest and is in the process of expanding to the entire country. On March 24, 2014, EPA provided an update on the model at a public workshop. This workshop provided an opportunity for stakeholders to provide technical and scientific feedback on the model. On August 13, 2014, a presentation was made to the American Chemical Society (ACS) meeting.
6. Species Sensitivity Distributions (SSDs) and population modeling being developed - Different methods for deriving species sensitivity distributions have been reviewed and will be applied to the initial consultations that the EPA and Services will conduct in the coming months. The Services and EPA are currently developing population modeling through monthly discussions with academic and government experts. EPA's Office of Research and Development and Office of Pesticide Programs are developing general and species-specific population models. Species sensitivity distributions will be for procedures separate from population modeling.

Based on recent settlement agreements as part of ongoing litigation against EPA and the Services (i.e., Northwest Center for Alternatives to Pesticides (NCAP) v. EPA, NCAP v. NMFS, and Center for Biological Diversity (CBD) v. FWS), the Agencies have agreed to



coordinate completion of nationwide consultations for five pesticides, carbaryl, chlorpyrifos, diazinon, malathion, and methomyl. The dates provided for completion of consultation in those settlements is December 2017 for chlorpyrifos, diazinon, and malathion, and December 2018 for carbaryl and methomyl. The Agencies are beginning to implement the interim approaches for chlorpyrifos, diazinon, and malathion using the annotated outline drafted during the May 2014 workshop.

In addition, three teams of interagency scientists have been formed and are currently working to complete effects determinations (i.e., Steps 1 and 2) for chlorpyrifos, diazinon, and malathion. All three teams have developed SSDs for fish, aquatic invertebrates, and birds and are currently reviewing other toxicity data available in the literature. EPA has developed an analytical approach that identifies and groups data (e.g., endpoints specific to family, species and endpoints) that allows risk assessors to easily access and review relevant toxicity data. Subgroups have been formed to continue to develop methods that may be used by all three chemical teams. These subgroups are focused on problem formulation development, aquatic exposure methodology, and probabilistic methodology. The problem formulation subgroup is identifying critical information that should be included in this portion of the written assessments. The aquatic exposure group is working to develop model assumptions and simulate the diverse aquatic habitats that are necessary for listed species, and the probabilistic subgroup is considering what questions could be addressed with probabilistic methods.

## **Meaningful Public Participation and Transparency**

Existing processes for registration, registration review, and consultation provide multiple opportunities for stakeholder engagement. Although federal law only requires limited public participation in the pesticide registration process, EPA's Pesticide Program began implementing a public participation process for certain registration actions in October 2009. The public participation process for registration actions provides a meaningful

opportunity for the public to comment on major registration decisions at a point in the registration process when comprehensive information and analysis are available. The Agency intends to use the outlined public participation process for the following types of applications: new active ingredients; first food use, first outdoor use; first residential use; and other actions of significant interest.

The current post-registration review process – known as registration review -- was created by section 3(g) of FIFRA and mandates that EPA review pesticides not less often than every 15 years. Under section 3(g)(1)(A)(ii), EPA has established procedures for registration review in its final rule published in the Federal Register (71 FR 45,732, Aug. 9, 2006, as amended at 73 FR 75595, Dec. 12, 2008) and codified at 40 CFR Part 155 Subpart C – Registration Review Procedures. Under the procedures established per 40 CFR part 155 Subpart C, three specific time points have been identified for public notification and comment during registration review: 1) initiation of a pesticide's reevaluation, 2) when a draft risk assessment has been conducted, and 3) for a proposed registration review decision. In addition to the public review and comment periods outlined above, EPA may meet with stakeholders at any time during registration review, either through Agency initiation, or stakeholder request, to discuss an ongoing registration review (40 CFR Part 155.52).

EPA's Endangered Species Protection Program (ESPP) is the EPA program for addressing the requirements of the ESA in connection with EPA's implementation of FIFRA. Announced in a November 2, 2005, Federal Register Notice, the 2005 ESPP document<sup>10</sup> outlines three opportunities for public input and participation during registration review: 1) prior to a "may affect" determination by EPA, 2) when identifying potential mitigation if a risk assessment identifies a listed species concern, and 3) prior to issuance of a Biological Opinion to EPA by the Services. Under the ESPP, EPA will generally engage the public in each of these three stages of its ESA-related work. The first and second opportunity for public review and comment meld with existing

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<sup>10</sup> <http://www.gpo.gov/fdsys/pkg/FR-2005-11-02/pdf/05-21838.pdf>

procedures established for registration review. These existing opportunities for public input have been strengthened and enhanced through process improvements jointly developed by the Agencies as described below.

In response to stakeholders' concerns expressed regarding a lack of transparency surrounding pesticides consultations, the Agencies have been seeking input from stakeholders on how to improve opportunities for their engagement in our processes. Specifically, stakeholders expressed the need for increased access to the decision-making process to give states and other stakeholders increased opportunities to provide relevant data for consideration during consultation, and the need for adequate time for public review and comment.

As mentioned above, the interim approaches developed by the Agencies in the summer and fall of 2013 were presented to the public during a workshop on November 15, 2013. On April 22, 2014, at the request of stakeholders, the Agencies held a public workshop to provide a forum for stakeholders to present scientific and technical feedback on the interim approaches. Representatives from the pesticide industry and non-governmental organizations attended the workshop and provided feedback. The scientific and technical presentations are available in the public docket (EPA-HQ-OPP-2014-0233) which can be accessed through [www.epa.gov/pesticides/oppfead1/endanger/2013/nas.html](http://www.epa.gov/pesticides/oppfead1/endanger/2013/nas.html). The Agencies are continuing to consider the information provided during the workshop as to how it might improve and facilitate listed species consultations. As described in more detail below in this report, public workshops, such as those held in November 2013, April 2014, and October 2014, further the Agencies' goal of developing a consultation process for pesticide impacts on listed species that is efficient, inclusive, and transparent.

However, the Agencies' efforts to improve transparency for pesticide consultations began earlier. Since 2011, the Agencies have organized and participated in meetings and workshops with stakeholders affected by pesticide consultations. The intention of the outreach efforts was to identify improvements to the registration review and consultation processes that would more fully involve stakeholders. Our intention in organizing and



holding these public meetings has been to obtain as much input as possible from stakeholders affected by ESA-related work and decisions under FIFRA.

A workshop organized with the Minor Crop Farmer Alliance addressing grower concerns was held in Denver, Colorado in May 2011. There was general agreement that information was needed to clarify and confirm product labeling information, identify where crops are grown, and that growers need to be engaged early and often. The meeting minutes and materials provided for and discussed at the workshop can be found at:

<http://www.ffva.com/imispublic/Content/NavigationMenu2/AgResources/Aglinks/Meetingmaterials/default.htm>. Copies of the individual presentations can be found on the following websites: Florida Fruit & Vegetable Association, [www.ffva.com](http://www.ffva.com); and the California Citrus Quality Council, [www.calcitrusquality.org](http://www.calcitrusquality.org).

Meetings were held in July and September 2011 with the Pesticide Program Dialogue Committee and its subgroup, the Pesticide Registration Improvement Act Process Improvements Workgroup. Members of these fora represent a variety of stakeholders including pesticide registrants, growers, states, and non-governmental organizations. These discussions centered on opportunities for public participation on ESA-related work under registration review and explored the appropriate timing during registration review for initiating consultation with the Services. The meeting minutes can be found at: <http://www.epa.gov/oppfead1/cb/ppdc/pria/index.html#meetings>.

In response to the stakeholder feedback gained in 2011, the Agencies prepared and proposed for public comment the paper entitled, "Enhancing Stakeholder Input in the Pesticide Registration Review and ESA Consultation Processes and Development of Economically and Technologically Feasible Reasonable and Prudent Alternatives" (hereafter referred to as the Stakeholder Paper). The Agencies finalized the Stakeholder Paper in March 2013; it can be found at [www.regulations.gov](http://www.regulations.gov) in the following docket: EPA-HQ-OPP-2012-0442. The processes described in the Stakeholder Paper supersede similar provisions in the 2005 ESPP document.

The Stakeholder Paper sets the stage for enhanced public engagement and describes changes to the Services' and EPA's review processes intended to enhance opportunities for stakeholders to provide input during review of pesticide registrations and consultations. It begins by emphasizing the value of improved coordination across the Agencies, a key recommendation of the NRC's study. Plans to reach out at the earliest point to pesticide users potentially affected to discuss the technological and economic feasibility of draft RPAs and RPMs intended to avoid jeopardy and adverse modification to critical habitat are included. The proposal describes the process by which stakeholders' comments on RPAs will be received by EPA and provided to the Services, who will then prepare a document to be included in the administrative record of the consultation explaining how comments were considered, and if appropriate, how the final biological opinion was modified to address the comments. The Services will provide the document to EPA, and both the Services and EPA will make the document available to the public upon request. The Agencies believe these changes provide clarity and transparency to Section 7 ESA consultations for pesticides and result in improved ESA pesticide consultations.

The Stakeholder Paper also describes "Focus" meetings, now being held at the start of registration review for pesticide active ingredients. This change brings the affected stakeholders into EPA's review process at the earliest point of a pesticide's registration review cycle. The Stakeholder Paper describes EPA's and the Services' agreement to initiate formal consultations at a later stage in the review process; consulting later in the registration review process allows EPA to develop more refined ecological risk assessments and to engage affected stakeholders in discussions throughout EPA's review process resulting in more focused consultation packages inclusive of any agreed upon mitigation for ESA-listed species. It recognizes USDA's valuable relationships with the agricultural community that provide a critical link between EPA's expertise on pesticides and the Services' expertise on listed species' locations, status and biology. The process changes described in the proposal have the potential to maximize the opportunity to effect changes that provide protections for species and their designated critical habitat,

lessen the impacts on agriculture, and narrow the scope of any necessary ESA consultations. USDA attends Focus meetings regularly, and the Services attend when warranted.

Currently, EPA uses the web application "Bulletins Live!" to set forth geographically-specific pesticide use limitations for the protection of threatened and endangered species and their designated critical habitat. "Bulletins Live!" can be found at <http://www.epa.gov/oppfead1/endanger/bulletins.htm>. EPA is upgrading to "Bulletins Live! Two" (BLT). The upgrades will move away from static county maps to an interactive map such as Bing™, or Google Earth™. BLT will be geo-coded making it possible for users to zoom in and out and focus on their area of interest, conduct searches for products (by name and EPA registration number) in addition to active ingredients, and download data. These upgrades are intended to make the web application setting forth species protections more user friendly for growers likely to be impacted by species protections.

By following the process outlined in the Stakeholder Paper, the following examples show positive outcomes resulting from enhanced stakeholder engagement during 1) consultations resulting from litigation, and 2) registration review.

#### *Litigation Consultations*

Rozol - Rozol™ is a rodenticide used to control black-tailed prairie dogs. The consultation was the result of a lawsuit, in which the court-ordered EPA to cancel Rozol's™ registration. EPA and FWS worked collaboratively with stakeholders (registrants) very early during the consultation to identify conservation measures that protect species and their critical habitat. Early mitigation termed "conservation measures" was agreed to prior to the final biological opinion. Incorporation of conservation measures protecting species and their designated critical habitat resulted in a "no jeopardy" conclusion, making RPAs unnecessary. Technologically and economically feasible RPMs were developed collaboratively between FWS, EPA, and the registrant. The consultation was completed efficiently and species protections put in place quickly.

Kaput - Kaput™ is a rodenticide used to control black-tailed prairie dogs which was also the subject of a lawsuit. The Agencies built upon their success from the Rozol™ consultation and applied the same early stakeholder engagement strategy to implement risk mitigation measures that would support a “no jeopardy” conclusion, negating the need for RPA, but achieve species protections through negotiated RPMs.

Thiobencarb - Thiobencarb is one of the pesticides included in the lawsuit related to pesticide impacts on Pacific Northwest salmonids. Early engagement between NMFS, EPA, the California Department of Pesticide Regulation (CDPR), the registrant, and the California Rice Commission allowed EPA and NMFS to develop an implementation plan for thiobencarb use on rice in California. NMFS considered and used existing state programs to mitigate risks to species and protect designated critical habitat. This resulted in a “no jeopardy” conclusion. RPM were based on existing state programs and developed in collaboration with EPA, CDPR, and NMFS. EPA is working with the registrant, state, and impacted growers to implement the RPM via endangered species bulletins. The draft bulletins were made available to affected stakeholders for public comment.

Ongoing pesticide consultations regarding salmonids - Diflubenzuron, propargite, and fenbutatin-oxide are three of the pesticides included in the lawsuit related to pesticide impacts on Pacific Northwest salmonids. EPA and NMFS worked with the registrants to identify pesticide uses that posed the greatest risks to salmonids. Registrants proposed several label modifications to labels to reduce risk to the species. EPA is now working with the registrants to incorporate the agreed upon mitigation measures into pesticide product labels. The final Biological Opinion is scheduled for completion in December 2014.

#### *Registration Review*

Starlicide - Starlicide™ is an avicide used mainly on rice, typically in the form of bait. It is currently undergoing registration review; and consultation has not been initiated. It



provides an example of positive outcomes from early stakeholder engagement prior to consultation. In the interest of reducing non-target exposure, EPA met regularly with USDA's Animal and Plant Health Inspection Service (APHIS) and the US Rice Federation to discuss ways to minimize exposure and reduce costly data requirements. The US Rice Federation suggested tilling the soil after the application/bait period would bury leftover bait, making it less accessible to non-targets. This would be a practical mitigation measure that is technologically and economically feasible for the rice use, and may work for some of the other broadcast uses as well. The goal of these outreach efforts is to eliminate or limit the potential for non-target exposures from the rice use and other broadcast uses, subsequently negating the need for the majority of the data requirements for Starlicide™. This modification will be reflected in the consultation EPA initiates with FWS as it works to complete registration review. The Agencies are working towards this kind of successful outcome through collaborative dialogue with stakeholders resulting in technologically and economically feasible mitigation measures, which when implemented have the dual benefits of precluding the need for expensive data requirements, and reducing, or eliminating concerns for listed species.

Gas cartridges - Gas cartridge products are used to control a variety of pests. It is currently undergoing registration review; and informal consultation has been initiated. It provides an example of achieving risk mitigation for some listed species through informal consultation. EPA and APHIS have worked closely together and developed a set of risk mitigation measures that build upon work already completed under previous consultations with FWS. APHIS has agreed to place the risk mitigation measures on their product labels narrowing the scope of consultation. The comment period on EPA's proposed interim decision is now closed. EPA is considering those comments and formulating the interim decision.

Silica - Silica (Diatomaceous Earth) is an insecticide that is currently undergoing registration review. EPA and FWS successfully completed informal consultation on 57 listed species that may be directly or indirectly affected by the use of silica. FWS



concurred with EPA's determination that silica "May affect, but is not likely to adversely affect" these species.

All of the examples described above reflect the benefit of working closely with stakeholders prior to initiation of consultation and sharing the conclusions of past consultations, which allows EPA to build upon work done for existing consultations. These positive outcomes underscore the importance of early engagement with stakeholders, consideration of existing consultations, state programs and state co-regulators, and flexibility.

### *Registration*

EPA recently registered the herbicide, Enlist Duo, containing 2,4-D and glyphosate. The product is for use in controlling weeds in corn and soybeans genetically-engineered to tolerate 2,4-D and glyphosate. EPA scientists used highly conservative and protective assumptions to evaluate ecological risks for the new uses of 2,4-D in Enlist Duo. The assessments confirm that these uses meet safety standards for pesticide registration, and as approved, will be protective of non-target species, including endangered species. To minimize potential exposures of non-target species, use restrictions to minimize drift include 30-foot in-field "no spray" buffer zones around the application areas, no pesticide application when the wind speed is over 15 mph, and only ground applications are permitted. In addition, the approved formulation is less prone to drift than other forms of 2,4-D. EPA's final regulatory decision document is available in EPA docket EPA-HQ-OPP-2014-0195.

## **Anticipating, Minimizing, and Resolving Delays**

In an effort to narrow and further streamline the pending consultations for ESA, EPA is compiling information on existing consultations for the approved use of pesticides on federal lands. By building on existing consultations that have already been completed for certain pesticides, EPA believes that significant efficiencies can be introduced into the nationwide pesticide consultations that will occur during registration review. In addition,

RPAs and RPMs identified in previous biological opinions can serve as the foundation for label clarifications and early risk mitigation since previous consultations have identified such measures as being helpful to endangered species. EPA's intent is to use and build upon those existing consultations between the Services and the other federal agencies. By using the results on consultations already completed by other federal agencies, EPA will reduce duplication of effort and save resources. EPA prepared and sent letters to the Bureau of Land Management, Department of Defense, Forest Service, Tennessee Valley Authority, Bureau of Indian Affairs, National Park Service, FWS, Department of Energy, and the Bureau of Reclamation requesting biological opinions, points of contact, lists of species on federal lands, chemicals approved for use on federal lands, and data. EPA is organizing the responses and information from the federal agencies. Once organized, this information will be reviewed and captured for use in future consultations.

Litigation constrains resources. Agency staff working on litigation-driven, species-specific complaints are diverted from working towards completing national-level consultations. The agencies have worked with litigants to align lawsuits so that the agencies could focus on national level consultations on all ESA-listed species rather than focus on single species, or a small subset of species in smaller geographical areas. The plaintiffs appreciate that the Agencies have limited resources, but have expressed their concern that the Agencies address pesticides that pose the most threat to listed species, first.

In the interest of preventing litigation and addressing plaintiffs concerns, EPA continuously dialogues with potential plaintiffs and employs a 3-pronged strategy that is intended to protect listed species and their designated critical habitat by focusing resources on areas where we can achieve the most protections. First, EPA will undertake the majority of its ESA consultation work through registration review. This allows EPA to focus on chemicals with higher risk, i.e., the "worst first", resulting in the greatest potential benefits for listed species while addressing plaintiff concerns, thus, minimizing potential future litigation. Consistent with the interagency "shared scientific approaches"

and “day forward approach,” we will phase in the interim scientific approaches over time. EPA, FWS, and NMFS will apply the interim measures to initial consultations and, based upon the experience gained with these approaches as well as any new science that may develop, modify procedures as appropriate.

Secondly, EPA intends to complete Overview Document-compliant endangered species assessments for new herbicide tolerant crop uses. An assessment that is Overview Document-compliant follows the procedures and methods described in the Overview Document. Currently, the Overview Document is the basis for all ecological assessments for all chemicals other than chlorpyrifos, diazinon, malathion, carbaryl, and methomyl. EPA will complete these effect determinations as resources allow. To maximize impact within these resources, it is likely that the initial registrations will not be nationwide in scope, and to the extent practical will focus on situations where EPA can make “no-effect” decisions. The Overview Document can be found at the following link: <http://www.epa.gov/oppfead1/endanger/consultation/ecorisk-overview.pdf>. As mentioned above, EPA recently registered the herbicide, Enlist Duo, containing 2,4-D and glyphosate.

Thirdly, EPA will provide information that compares the potential hazards of the new active ingredients to already registered pesticides with similar modes of toxicity and the same use patterns. This will allow stakeholders to compare the relative toxicity of the proposed registration to available alternatives. We believe that older, currently registered chemicals typically have the potential to pose greater risks to ESA-listed species than do the newer, generally safer pesticides being introduced into the marketplace today, and that the comparative hazard information will illustrate this to all stakeholders. This additional hazard information contributes to transparency and promotes good communication with the public, improves relationships and trust with our stakeholders, and maximizes the potential to minimize litigation and prevent delays.

## Conclusion

The Agencies have developed a joint, highly robust process to address pesticide consultations under the ESA. We are collaborating on developing interim approaches to apply to national-level risk assessments for pesticides and coordinating our responses on litigation. The scientific procedures and methodologies developed as part of the interim approaches are the best that have ever been developed for ESA-listed species-pesticide consultations. EPA and the Services will continue working towards incorporating the NRC study's recommendations over the coming months to strengthen even further the foundation behind these assessments. EPA and the Services are committed to scientifically sound risk assessments resulting in protections for ESA-listed species that do not unnecessarily hinder agriculture. EPA and the Services are committed to maintaining a robust dialogue with all of our stakeholders to ensure transparency throughout the pesticide consultation process. Regular, meaningful communication and collaboration between the Agencies' management and scientific staff is important to maintaining our current momentum and success.

Positive outcomes from the Agencies' joint efforts include: some early successes on litigation-driven consultations affording species protections for some chemical/species combinations, the Stakeholder Paper, interim approaches to pesticide risk assessments for listed species, interagency workshops, public comment periods on important papers and work products, and meetings open to the public to keep stakeholders informed of our progress as we move forward. In addition, EPA and the Services are working together on negotiations with plaintiffs to address our agency-specific lawsuits. Positive outcomes from this transition include negotiated settlements and extensions on ongoing litigation, allowing EPA and the Services to devote time and resources to implementation of the recommendations provided in the NRC's study and to deliver nationwide assessments for listed species.

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

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## **GOVERNMENTAL ADVISORY COMMITTEE TO THE UNITED STATES REPRESENTATIVE TO THE NORTH AMERICAN COMMISSION FOR ENVIRONMENTAL COOPERATION**

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### **1. Committee's Official Designation (Title):**

Governmental Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation

### **2. Authority:**

This charter renews the Governmental Advisory Committee (GAC) to the United States Representative to the Council of the Commission for Environmental Cooperation (CEC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The GAC is in the public interest and advises the U.S. Representative on implementation and elaboration of the North American Agreement on Environmental Cooperation (NAAEC). Establishment of the committee is authorized under article 18 of the NAAEC and by the North American Free Trade Agreement Implementation Act, P.L. 103-182, which authorizes U.S. participation in the CEC. Federal government responsibilities relating to the committee are set forth in Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation."

### **3. Objectives and Scope of Activities:**

The GAC will provide advice, information and recommendations on specific governmental issues. The GAC will evaluate a broad range of environment-related strategic, scientific, technological, regulatory and economic issues to be addressed in implementation and elaboration of the NAAEC.

### **4. Description of Committee's Duties:**

The duties of the GAC are solely to provide advice to EPA.

### **5. Official(s) to Whom the Committee Reports:**

The GAC will provide advice and recommendations and report to the Environmental Protection Agency (EPA) Administrator, who serves as the United States Representative to the Council of the CEC under the authority of Executive Order 12915.



**6. Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Federal Advisory Committee Management and Outreach, within the Office of the Administrator.

**7. Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of GAC is \$166,000 which includes 0.7 person-years of support.

**8. Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

**9. Estimated Number and Frequency of Meetings:**

The GAC expects to meet approximately three (3) times a year. Meetings may occur approximately once every four (4) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate. A full-time or permanent part-time employee of EPA will be appointed as the DFO.

As required by FACA, the GAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552b of Title 5, U.S.C. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the GAC.

**10. Duration and Termination:**

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed in accordance with Section 14 of FACA.

**11. Member Composition:**

The GAC will be composed of approximately twelve (12) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from State, local and tribal governments.

**12. Subgroups:**

EPA, or the GAC with EPA approval, may form GAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the GAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the U.S. Representative to the Council of the CEC.

**13. Recordkeeping:**

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

August 10, 2012  
Agency Approval Date

AUG 24 2012  
Date Filed with Congress

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

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## NATIONAL ADVISORY COMMITTEE TO THE UNITED STATES REPRESENTATIVE TO THE NORTH AMERICAN COMMISSION FOR ENVIRONMENTAL COOPERATION

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**1. Committee's Official Designation (Title):**

National Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation

**2. Authority:**

This charter renews the National Advisory Committee (NAC) to the United States Representative to the Council of the Commission for Environmental Cooperation (CEC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The NAC is in the public interest and advises the U.S. Representative on implementation and elaboration of the North American Agreement on Environmental Cooperation (NAAEC). Establishment of the committee is authorized under article 17 of the NAAEC and by the North American Free Trade Agreement Implementation Act, P.L. 103-182, which authorizes U.S. participation in the CEC. Federal government responsibilities relating to the committee are set forth in Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation."

**3. Objectives and Scope of Activities:**

The NAC will provide advice, information and recommendations on a broad range of environment-related strategic, scientific, technological, regulatory and economic issues to be addressed in implementation and elaboration of the NAAEC.

**4. Description of Committee's Duties:**

The duties of the NAC are solely to provide advice to EPA.

**5. Official(s) to Whom the Committee Reports:**

The NAC will submit advice and recommendations and report to the Environmental Protection Agency (EPA) Administrator, who serves as the United States Representative to the Council of the CEC under the authority of Executive Order 12915.



**6. Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Federal Advisory Committee Management and Outreach, within the Office of the Administrator.

**7. Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of the NAC is \$166,000 which includes 0.7 person-years of support.

**8. Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

**9. Estimated Number and Frequency of Meetings:**

The NAC expects to meet approximately three (3) times a year. Meetings may occur approximately once every four (4) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the NAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552(b) of Title 5, U.S.C. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the NAC.

**10. Duration and Termination:**

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

**11. Member Composition:**

The NAC will be composed of approximately twelve (12) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from the following stakeholder categories: environmental groups and non-profit entities, business and industry, and educational institutions.

**12. Subgroups:**

EPA, or the NAC with EPA approval, may form NAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the NAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the U.S. Representative to the Council of the CEC.

**13. Recordkeeping:**

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

August 10, 2012

Agency Approval Date

AUG 24 2012

Date Filed with Congress

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

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## GOOD NEIGHBOR ENVIRONMENTAL BOARD

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1. **Committee's Official Designation (Title):**

Good Neighbor Environmental Board

2. **Authority:**

This charter renews the Good Neighbor Environmental Board (GNEB) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The GNEB is in the public interest, and is specifically directed under Section 6 of the Enterprise for the Americas Initiative Act, 7 U.S.C. Section 5404.

The authority of the President under this section to establish an advisory board to be known as the Good Neighbor Environmental Board is delegated to the Administrator of the Environmental Protection Agency (EPA), pursuant to Section 10 of Executive Order 12916, May 13, 1994.

3. **Objectives and Scope of Activities:**

The GNEB will provide advice, information and recommendations on the need for implementation of environmental and infrastructure projects "within the States of the United States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border."

4. **Description of Committee's Duties:**

The duties of the GNEB are solely to provide advice.

5. **Official(s) to Whom the Committee Reports:**

The GNEB advises the President or his delegatee and also may provide advice to Congress through the President or his delegatee.

6. **Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Federal Advisory Committee Management and Outreach, within the Office of the Administrator.

**7. Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of GNEB is \$425,000 which includes 1.5 person-years of support.

**8. Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

**9. Estimated Number and Frequency of Meetings:**

The committee expects to meet approximately three (3) times a year. Meetings may occur approximately once every four (4) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the GNEB will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection (c) of Section 552b of Title 5, U.S.C. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the GNEB.

**10. Duration and Termination:**

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

**11. Member Composition:**

The GNEB will be composed of approximately 25 members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from the United States Government, including the Department of Agriculture; tribal government; governments of the States of Arizona, California, New Mexico, and Texas; and private organizations, including community development, academic, health, environmental, and other non-governmental entities.

**12.    Subgroups:**

EPA, or the GNEB with EPA's approval, may form GNEB subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the GNEB for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the President.

**13.    Recordkeeping:**

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

August 10, 2012

Agency Approval Date

**SEP - 7 2012**

                      
Date Filed with Congress



# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

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## NATIONAL ENVIRONMENTAL JUSTICE ADVISORY COUNCIL

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### 1. **Committee's Official Designation (Title):**

National Environmental Justice Advisory Council

### 2. **Authority:**

This charter renews the National Environmental Justice Advisory Council (NEJAC) in accordance with the requirements of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The NEJAC is in the public interest and supports the Environmental Protection Agency (EPA) in performing its duties and responsibilities.

### 3. **Objectives and Scope of Activities:**

The NEJAC will provide independent advice and recommendations to the Administrator about broad, crosscutting issues related to environmental justice. The NEJAC's efforts will include evaluation of a broad range of strategic, scientific, technological, regulatory, community engagement and economic issues related to environmental justice. The major objectives will be to provide advice and recommendations about EPA efforts to:

- a. Integrate environmental justice considerations into Agency programs, policies and activities
- b. Improve the environment or public health in communities disproportionately burdened by environmental harms and risks
- c. Address environmental justice to ensure meaningful involvement in EPA decision-making, build capacity in disproportionately-burdened communities, and promote collaborative problem-solving for issues involving environmental justice
- d. Strengthen its partnerships with other governmental agencies, such as other Federal agencies and state, tribal, or local governments, regarding environmental justice issues
- e. Enhance research and assessment approaches related to environmental justice

### 4. **Description of Committees Duties:**

The duties of the NEJAC are solely to advise the EPA.

### 5. **Official(s) to Whom the Committee Reports:**

The NEJAC will provide advice and recommendations, and report to the EPA Administrator through the Office of Environmental Justice, Office of Enforcement and Compliance Assurance.

**6. Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Environmental Justice, Office of Enforcement and Compliance Assurance.

**7. Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of the NEJAC is \$490,000, which includes 1.5 person-years of support.

**8. Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all of the meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

**9. Estimated Number and Frequency of Meetings:**

The NEJAC will meet approximately twice a year. Meetings may occur approximately once every six months or as needed and approved by the Designated Federal Officer (DFO), or his/her designee. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the NEJAC will hold open meetings, unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with Subsection c of Section 552b of Title 5, United States Code. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the NEJAC.

**10. Duration and Termination:**

The NEJAC will be examined annually and will exist until the EPA determines the Council is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed in accordance with Section 14 of FACA.

**11. Member Composition:**

The NEJAC will be composed of approximately 26 members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from among, but not limited to: community-based groups; industry and business; academic and educational institutions; State and local governments; indigenous organization and Federally-recognized tribal governments and Indigenous groups; and non-governmental and environmental groups, as deemed appropriate.

**12. Subgroups:**

EPA, or the NEJAC with EPA approval, may form subcommittees or work groups for any purpose consistent with this charter. Such subcommittees or work groups may not work independently of the chartered committee and must report their recommendations and advice to the NEJAC for full deliberation and discussion. Subcommittees or work groups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the EPA.

**13. Recordkeeping:**

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

August 30, 2012  
Agency Approval Date

September 6, 2012  
GSA Consultation Date

**SEP 14 2012**  
Date Filed with Congress

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

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## GULF OF MEXICO CITIZEN ADVISORY COMMITTEE

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### 1. **Committee's Official Designation (Title):**

Gulf of Mexico Citizen Advisory Committee

### 2. **Authority:**

This charter is renewed in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The committee was formerly named the Gulf of Mexico Executive Council. The Gulf of Mexico Citizen Advisory Committee (GMCAC) is in the public interest and supports the Environmental Protection Agency (EPA) in performing its duties and responsibilities under the Clean Water Act (CWA), as amended (33 U.S.C. 1251-1387).

### 3. **Objectives and Scope of Activities:**

In order to engage the public in actions to improve conditions of the Gulf of Mexico, the Administrator directed the establishment of the GMCAC.

The GMCAC will provide advice, information and recommendations to the Administrator on policy and technical issues associated with habitat conservation and restoration, improvements in water quality, and protection of living, coastal and marine resources of the Gulf of Mexico. The recommendations of the GMCAC also may potentially fulfill a need for public engagement to inform EPA's participation in implementing its responsibilities under the RESTORE Act. The GMCAC may advise on issues that cut across several program areas or initiatives that directly impact the Gulf.

The major objectives are to provide advice and recommendations and citizens' views on:

- a. Revitalizing and building resilient Gulf Coast communities to protect and sustain them against deteriorating environmental and economic conditions;
- b. Developing habitat conservation and restoration strategies and actions designed to restore and conserve key Gulf Coast habitats such as coastal wetlands, estuaries, barrier islands, upland habitats, seagrass beds, corals, and offshore habitats;
- c. Assessing and improving Gulf Coast water quality by reviewing watershed management practices and using careful science-based review and innovative approaches to enhance water quality; and

- d. Replenishing and protecting Gulf Coast living, coastal and marine resources by promoting resource management that focuses on the needs and functions of the ecosystem as a whole.

4. **Description of Committee's Duties:**

The duties of the GMCAC are solely to provide advice to the EPA.

5. **Official(s) to Whom the Committee Reports:**

The GMCAC will provide advice and recommendations and report to the EPA Administrator.

6. **Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Gulf of Mexico Program Office, Office of Water, Region 4, and Region 6.

7. **Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of GMCAC and supporting committees is \$250,000 which includes 1.0 person-years of support.

8. **Designated Federal Officer:**

A full-time or permanent part-time employee of the EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all of the advisory committee and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. **Estimated Number and Frequency of Meetings:**

The GMCAC is expected to meet as often as necessary, but at least quarterly (in person or via conference call). Meetings may occur approximately once every 3 months or as needed and approved by the DFO. The EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the GMCAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552b of Title 5, United States Code. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the GMCAC.



**10. Duration and Termination:**

The GMCAC will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After the initial two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

**11. Member Composition:**

The chartered committee will be composed of approximately twenty-five (25) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, the EPA will consider candidates who are citizens of the five Gulf coastal states (Alabama, Florida, Louisiana, Mississippi, and Texas).

**12. Subgroups:**

The EPA, or the GMCAC with the EPA's approval, may form subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the GMCAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

**13. Recordkeeping:**

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

September 6, 2012

Agency Approval Date

September 7, 2012

GSA Consultation Date

**SEP 14 2012**

                      
Date Filed with Congress

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

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## CLEAN AIR ACT ADVISORY COMMITTEE

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1. **Committee's Official Designation (Title):**

Clean Air Act Advisory Committee

2. **Authority:**

This charter renews the Clean Air Act Advisory Committee (CAAAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The CAAAC is in the public interest and supports the Environmental Protection Agency (EPA) in performing its duties and responsibilities under the Clean Air Act Amendments of 1990.

3. **Objectives and Scope of Activities:**

The CAAAC will provide advice, information and recommendations on policy and technical issues associated with implementation of the Clean Air Act Amendments of 1990 (the Act). These issues include the development, implementation, and enforcement of the new and expanded regulatory and market-based programs required by the Act, with the exception of the provisions of the Act that address acid rain. The programs falling under the purview of the committee include those for meeting National Ambient Air Quality Standards, reducing emissions from vehicles and vehicle fuels, reducing greenhouse gas emissions, reducing air toxic emissions, issuing operating permits and collecting fees, and carrying out new and expanded compliance authorities. The CAAAC may advise on issues that cut across several program areas.

The major objectives are to provide advice and recommendations on:

- a. Approaches for new and expanded programs, including those using innovative technologies and policy mechanisms to achieve environmental improvements.
- b. The potential health, environmental, and economic effects of Clean Air Act programs on the public, the regulated community, State and local governments, and other Federal agencies.
- c. The policy and technical contents of proposed major EPA rulemaking and guidance required by the Act in order to help effectively incorporate appropriate outside advice and information.
- d. The integration of existing policies, regulations, standards, guidelines, and procedures into programs for implementing requirements of the Act.

**4. Description of Committees Duties:**

The duties of the CAAAC are solely to provide advice to EPA.

**5. Official(s) to Whom the Committee Reports:**

The CAAAC will submit advice and recommendations and report to the EPA Administrator, through the Office of Air and Radiation.

**6. Agency Responsible for Providing the Necessary Support:**

The EPA will be responsible for financial and administrative support. Within the EPA, this support will be provided by the Office of Air and Radiation.

**7. Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of the CAAAC is \$650,000 which includes 1.5 person-years of support.

**8. Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the DFO. The DFO or a designee will be present at all of the advisory committee's and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

**9. Estimated Number and Frequency of Meetings:**

The CAAAC expects to meet approximately three (3) times a year. Meetings may occur approximately once every four (4) months or as needed and approved by the Designated Federal Officer (DFO). EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the CAAAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552(b) of Title 5, United States Code. Interested persons may attend meetings, appear before the committee as time permits, and file comments with the CAAAC.

**10. Duration and Termination:**

The CAAAC will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After this period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

**11. Member Composition:**

The CAAAC will be composed of approximately forty-five (45) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from business and industry, academic institutions, State, local and tribal governments, EPA officials, unions, public interest groups, environmental organizations and service groups.

**12. Subgroups:**

EPA, or the CAAAC with EPA's approval, may form CAAAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the CAAAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

**13. Recordkeeping:**

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

October 5, 2012

Agency Approval Date

October 16, 2012

GSA Consultation Date

**OCT 26 2012**

Date Filed with Congress

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

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## ADVISORY COUNCIL ON CLEAN AIR COMPLIANCE ANALYSIS

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1. **Committee's Official Designation (Title):**

Advisory Council on Clean Air Compliance Analysis

2. **Authority:**

This charter renews the Advisory Council on Clean Air Compliance Analysis (Council) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The Council is in the public interest and supports the Environmental Protection Agency (EPA) in performing its duties and responsibilities. Section 812 of the Clean Air Act Amendments of 1990 (codified as 42 U.S.C. § 7612) specifically directed the EPA Administrator to establish the Council.

3. **Objectives and Scope of Activities:**

The Council will provide advice, information and recommendations on technical and economic aspects of analyses and reports EPA prepares concerning the impacts of the Clean Air Act (CAA) on the public health, economy, and environment of the United States.

The Clean Air Act Amendments of November 15, 1990 require the Council to:

- a. Review data to be used for any analysis required under section 312 of the CAA and make recommendations on its use.
- b. Review the methodology used to analyze such data and make recommendations on the use of such methodology.
- c. Prior to the issuance of a report to Congress required under section 312 of the CAA, review the findings of the report and make recommendations concerning the validity and utility of such findings.

At EPA's request, the Council will:

- d. Review other reports and studies prepared by EPA relating to the benefits and costs of the CAA.
- e. Provide advice on areas where additional knowledge is necessary to fully evaluate the impacts of the CAA and the research efforts necessary to provide such information.



4. **Description of Committee's Duties:**

The duties of the Council are to provide advice to EPA.

5. **Official(s) to Whom the Committee Reports:**

The Council will report to the EPA Administrator.

6. **Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of the Science Advisory Board in the Office of the Administrator.

7. **Estimated Annual Operating Costs and Person-Years:**

The estimated annual operating cost of the Council is \$300,000, which includes 2.0 person-years of support.

8. **Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all of the advisory committee and subcommittee meetings. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

9. **Estimated Number and Frequency of Meetings:**

The Council expects to meet approximately two (2) to three (3) times a year. Meetings will occur approximately once every three (3) to six (6) months, or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the Council will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with subsection c of Section 552(b) of Title 5, United States Code. Interested persons may attend meetings, appear before the Council as time permits, and file comments with the Council.

10. **Duration and Termination:**

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

**11. Member Composition:**

As required by the CAA, the Council will be composed of at least 9 members. Members will serve as Special Government Employees. Members will be recognized experts from the fields of health and environmental effects of air pollution, economic analysis, environmental sciences, and such other fields as the Administrator determines to be appropriate.

**12. Subgroups:**

EPA, or the Council with EPA's approval, may form Council subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the Council for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

**13. Recordkeeping:**

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, shall be handled in accordance with NARA General Records Schedule 26, Section 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

November 1, 2012

Agency Approval Date

NOV 09 2012

Date Filed with Congress

## Eades, Cassaundra

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**From:** Blizzard, James  
**Sent:** Tuesday, November 05, 2013 8:38 AM  
**To:** Eades, Cassaundra; Mims, Kathy  
**Subject:** FW: Rep. Capps' Budget Question for the Record  
**Attachments:** Rep. Capps QFR Final.pdf

This was a last minute question submitted for the May 16<sup>th</sup> House Energy and Commerce Budget Hearing. If possible, please add it to that file. THX

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**From:** Blizzard, James  
**Sent:** Tuesday, November 05, 2013 8:36 AM  
**To:** 'Nick.Abraham@mail.house.gov'  
**Subject:** Rep. Capps' Budget Question for the Record

Please let me know if you need anything else.

Jim Blizzard  
Senior Policy Advisor  
Office of Congressional Relations  
U. S. Environmental Protection Agency  
(202) 564-1695  
[blizzard.james@epa.gov](mailto:blizzard.james@epa.gov)

Question Submitted for the Record by Representative Capps

**Question: I commend EPA, as well as HUD and DOT, on their continuing commitment to the Partnership for Sustainable Communities, which helps our local communities plan more efficiently, improving safety, energy efficiency, and livability. The Partnership exemplifies smart community planning that benefits both people and the environment. Mr. Perciasepe, what are some of the main accomplishments of the Partnership for Sustainable Communities and how will EPA continue to prioritize it in its FY 2014 budget?**

Answer: Thank you for the opportunity to respond to this question about our innovative partnership with HUD and DOT. This work will continue to be a significant focus going forward as we find new ways to use collaboration with partners at all levels of government to protect human health and the environment in fiscally challenging times. For example, EPA Administrator McCarthy recently released her seven priority themes for "Meeting the Challenge Ahead" and the Partnership for Sustainable Communities directly supports two of those themes:

- Making a Visible Difference in Communities across the Country
- Launching a New Era of State, Tribal and Local Partnerships

Therefore, our work with HUD and DOT on the Partnership will continue to be an important way in which we work toward achieving our goals. I would point to a few accomplishments of the Partnership as outstanding examples of how our work with HUD and DOT supports these key agency priorities by overcoming traditional barriers to progress, fostering innovation and supporting greater efficiency in the way we plan communities.

Over the past four years, the Partnership agencies have provided grants and technical assistance to over 730 communities. This assistance has ranged from targeted technical assistance workshops to multi-million dollar / multi-year grants. However, the consistent theme across all this work has been close coordination among the agencies in support of a clearly defined set of Livability Principles to guide the work. From the outset, the agreement by all three agency heads to direct resources in support of a common set of principles has been a foundation of the initiative's success. This common vision, combined with the commitment of key staff meet every week for the past four years is a major feature that distinguishes this effort from traditional interagency efforts. As a result, we have improved the effectiveness of our work at all scales by ensuring that Federal resources are coordinated and each project takes a more holistic approach that bridges traditional agency silos.

For example, EPA HUD and DOT's efforts in the cities of Ranson and Charlestown, West Virginia are a good example of how the Partnership has allowed us to capitalize on each agency's strengths, avoid duplication of effort, and enable communities to fully leverage a variety of Federal support. In 2010, Ranson and Charlestown received a three year HUD Sustainable Communities Challenge Grant, an EPA Brownfields Area-wide Planning Grant and a DOT TIGER II Planning Grant to create a comprehensive plan for the Ranson-Charles Town Green Corridor Revitalization Initiative. As the cities were kicking off these larger planning efforts, EPA also selected Ranson for its Building Blocks for Sustainable Communities technical assistance program. This more targeted assistance program helped the city strengthen the Green Corridor Initiative by working with stakeholders to develop a community wide vision, identify priority areas for growth, and evaluate existing community tools for managing growth.

The plan that was produced envisions a transformation of Fairfax Boulevard, the main thoroughfare between the two cities. The redesigned boulevard, will also surrounded by walkable, bikeable connections between the two cities to provide access to regional job centers and community facilities. In April 2012, Ranson's city council unanimously approved proposals to enact a new zoning code and comprehensive plan, moving the community one step closer to realizing its vision for growth. Following these changes in city policy, Ranson was also awarded a \$5 million TIGER grant to support implementation of the corridor plan. Over a two year period the Partnership's coordinated assistance helped Ranson and Charlestown move from planning to implementation of an initiative that will help revitalize the heart of these two communities.

Little Rock, Arkansas also exemplifies what we can achieve by working closely with HUD and DOT using sustainable communities as a core organizing principle. In 2010, EPA, along with HUD and DOT, worked with Little Rock during the first year of the Greening America's Capitals program. The focus was developing a design plan for Main Street that would help: revitalize the economically distressed area, better manage stormwater, and improve the walkability of the streets. As result of the design that emerged, the city was able leverage:

- \$900,0000 from the Arkansas Department of Natural Resources, (EPA Clean Water Act Section 319 non-point source grant funds) to design and to implement green infrastructure elements along a five-block section of Main Street.
- A \$900,000 grant from Pulaski County Brownfields Cleanup Revolving Loan Grant to cleanup and redevelop several buildings on a key block of Main Street.
- \$150,000 "Our Town" grant from the National Endowment for the Arts to fund a "Creative Corridor" project
- These investments, in turn, have leveraged millions in private investment and helped to revitalize a distressed corridor that previously had many vacant buildings.



Finally, Metroplan, the region's metropolitan planning organization, received a \$1,400,000 HUD Sustainable Communities Regional Planning Grant to support the development of *Metro 2040: Blueprint for a Sustainable Region*. This effort will help spread the innovative strategies used in Little Rock to other communities in the Central Arkansas region.

For FY 2014, our Office of Sustainable Communities will continue to coordinate with HUD and DOT on the selection and delivery of its technical assistance programs: *Building Blocks for Sustainable Communities*, *Smart Growth Implementation Assistance* and *Greening America's Capitals*. HUD and DOT will also continue their Interagency Agreements with EPA that support the *Governor's Institute on Community Design*. The Governor's Institute brings national experts into states at the request of their governors to provide technical assistance to cabinet officials. Additionally, the EPA Brownfields Program will continue to include language in the Areawide Planning Grants application instructions that prompts applicants to describe, where appropriate, connections between their proposed workplan and existing Partnership for Sustainable Community grants from HUD and DOT. Finally, EPA headquarters and regional staff will also continue to participate in the review of upcoming HUD and DOT grants related to the Partnership.

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

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## PESTICIDE PROGRAM DIALOGUE COMMITTEE

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### 1. Committee's Official Designation (Title):

Pesticide Program Dialogue Committee

### 2. Authority:

This charter renews the Pesticide Program Dialogue Committee (PPDC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. PPDC is in the public interest and supports EPA in performing its duties and responsibilities under the Federal Insecticide, Fungicide and Rodenticide Act; the Federal Food, Drug and Cosmetic Act; the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996; and the Pesticide Registration Improvement Renewal Act.

### 3. Objectives and Scope of Activities:

EPA's Office of Pesticide Programs (OPP) is entrusted with the important responsibilities of ensuring that Americans are not exposed to unsafe levels of pesticides in food, protecting from unreasonable risk and educating those who apply or are exposed to pesticides occupationally or through use of products, and protecting the environment and special ecosystems from potential risks posed by pesticides.

PPDC is a policy-oriented committee that will provide policy advice, information and recommendations to EPA. PPDC will provide a public forum to discuss a wide variety of pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and policy issues associated with evaluating and reducing risks from use of pesticides.

The major objectives are to provide policy advice, information and recommendations on:

- a. Developing practical, protective approaches for addressing pesticide regulatory policy, program implementation, environmental, technical, economic; and other policy issues; and
- b. Reviewing proposed modifications to OPP's current policies and procedures, including the technical and economic feasibility of any proposed regulatory changes to the current process of registering and reregistering pesticides

### 4. Description of Committees Duties:

The duties of PPDC are solely to provide advice to EPA.

**5. Official(s) to Whom the Committee Reports:**

PPDC will provide policy advice, information and recommendations, and report to the EPA Administrator, through the Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention.

**6. Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Pesticide Programs, Office of Chemical Safety and Pollution Prevention.

**7. Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of the PPDC is \$250,000, which includes 1.5 person-years of support.

**8. Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the DFO. The DFO or a designee will be present at all of the meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

**9. Estimated Number and Frequency of Meetings:**

PPDC expects to meet approximately two (2) times a year. Meetings may occur approximately once every six (6) months or as needed and approved by the Designated Federal Officer (DFO). EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the PPDC will hold open meetings unless the Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits and file comments with the PPDC.

**10. Duration and Termination:**

PPDC will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

**11. Member Composition:**

PPDC will be composed of approximately forty-five (45) members. Members will serve as Representative members of non-Federal interests, Regular Government Employees (RGEs), or

Special Government Employees (SGEs). Representative members are selected to represent the points of view held by specific organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from pesticide user, grower and commodity groups; consumer and environmental/public interest groups; farm worker organizations; pesticide industry and trade associations; State, local and Tribal governments; Federal government; academia; the general public; and public health organizations.

**12. Subgroups:**

EPA, or the PPDC with EPA's approval, may form subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered PPDC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the EPA.

**13. Recordkeeping:**

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 26, Section 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records shall be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

September 30, 2013

Agency Approval Date

October 21, 2013

GSA Consultation Date

**OCT 25 2013**

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Date Filed with Congress

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

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## HUMAN STUDIES REVIEW BOARD

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### 1. Committee's Official Designation (Title):

Human Studies Review Board

### 2. Authority:

This charter renews the Human Studies Review Board (HSRB) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. This Committee was established in February of 2006 under the authority of 40 CFR 26.1603. The HSRB is in the public interest and supports the U.S. Environmental Protection Agency (EPA) in performing its duties and responsibilities.

### 3. Objectives and Scope of Activities:

The HSRB will provide advice, information, and recommendations on issues related to scientific and ethical aspects of human subjects research.

The major objectives are to provide advice and recommendations on:

- a. Research Proposals and Protocols;
- b. Reports of completed research with human subjects; and
- c. How to strengthen EPA's programs for protection of human subjects of research.

### 4. Description of Committees Duties:

The duties of the HSRB are solely to provide scientific or policy advice to EPA.

### 5. Official(s) to Whom the Committee Reports:

HSRB will report to the EPA Administrator through EPA's Science Advisor.

### 6. Agency Responsible for Providing the Necessary Support:

EPA will be responsible for financial and administrative support. Within EPA, this support will primarily be provided by the Office of the Science Advisor (OSA).

**7. Estimated Annual Operating Costs and Person Years:**

The estimated annual operating cost of HSRB is \$424,000, which includes 1.2 person-years of support.

**8. Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

**9. Estimated Number and Frequency of Meetings:**

The Committee expects to meet approximately four (4) times a year. Meetings may occur approximately once every three (3) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, HSRB will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the Board as time permits, and file comments with the HSRB.

**10. Duration and Termination:**

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

**11. Member Composition:**

The HSRB will be composed of approximately fifteen (15) members who will serve as Special Government Employees (SGEs) or Regular Government Employees (RGEs). In selecting members, the EPA will consider candidates from the environmental scientific/technical fields, human health care professionals, academia, industry, public and private research institutes or organizations, other governmental agencies, and other relevant interest areas. The HSRB membership will include experts in relevant scientific or technical disciplines such as bioethics, biostatistics, human health risk assessment and human toxicology.



**12.    Subgroups:**

EPA, or the HSRB with EPA's approval, may form HSRB subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered HSRB for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

**13.    Recordkeeping:**

The records of the Committee, formally and informally established subcommittees, or other subgroups of the Committee, will be handled in accordance with NARA General Records Schedule 26, Section 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

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Agency Approval Date

**MAR 28 2014**

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Date Filed with Congress

## UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

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### NATIONAL ADVISORY COMMITTEE TO THE UNITED STATES REPRESENTATIVE TO THE NORTH AMERICAN COMMISSION FOR ENVIRONMENTAL COOPERATION

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1. **Committee's Official Designation (Title):**

National Advisory Committee to the United States Representative to the North American Commission for Environmental Cooperation

2. **Authority:**

This charter renews the National Advisory Committee (NAC) to the United States Representative to the Council of the Commission for Environmental Cooperation (CEC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App. 2. The NAC is in the public interest and advises the U.S. Representative on implementation and elaboration of the North American Agreement on Environmental Cooperation (NAAEC). Establishment of the committee is authorized under article 17 of the NAAEC and by the North American Free Trade Agreement Implementation Act, P.L. 103-182, which authorizes U.S. participation in the CEC. Federal government responsibilities relating to the committee are set forth in Executive Order 12915, entitled "Federal Implementation of the North American Agreement on Environmental Cooperation."

3. **Objectives and Scope of Activities:**

The NAC will provide advice, information and recommendations on a broad range of environment-related strategic, scientific, technological, regulatory and economic issues to be addressed in implementation and elaboration of the NAAEC.

4. **Description of Committee's Duties:**

The duties of the NAC are solely to provide advice to EPA.

5. **Official(s) to Whom the Committee Reports:**

The NAC will submit advice and recommendations and report to the Environmental Protection Agency (EPA) Administrator, who serves as the United States Representative to the Council of the CEC under the authority of Executive Order 12915.

**6. Agency Responsible for Providing the Necessary Support:**

EPA will be responsible for financial and administrative support. Within EPA, this support will be provided by the Office of Diversity, Advisory Committee Management and Outreach, within the Office of Administration and Resources Management.

**7. Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of the NAC is \$166,000 which includes 0.7 person-years of support.

**8. Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

**9. Estimated Number and Frequency of Meetings:**

The NAC expects to meet approximately three (3) times a year. Meetings may occur approximately once every four (4) months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the NAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the NAC.

**10. Duration and Termination:**

This charter will be in effect for two years from the date it is filed with Congress. After this two-year period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

**11. Member Composition:**

The NAC will be composed of approximately fifteen (15) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from the following stakeholder categories: environmental groups and non-profit entities, business and industry, and educational institutions.

**12. Subgroups:**

EPA, or the NAC with EPA approval, may form NAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered NAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the U.S. Representative to the Council of the CEC.

**13. Recordkeeping:**

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

**JUL 29 2014**

Agency Approval Date

**AUG 22 2014**

Date Filed with Congress

# UNITED STATES ENVIRONMENTAL PROTECTION AGENCY CHARTER

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## CLEAN AIR ACT ADVISORY COMMITTEE

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**1. Committee's Official Designation (Title):**

Clean Air Act Advisory Committee

**2. Authority:**

This charter renews the Clean Air Act Advisory Committee (CAAAC) in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App.2. The CAAAC is in the public interest and supports the Environmental Protection Agency (EPA) in performing its duties and responsibilities under the Clean Air Act Amendments of 1990.

**3. Objectives and Scope of Activities:**

The CAAAC will provide advice, information and recommendations on policy and technical issues associated with implementation of the Clean Air Act Amendments of 1990 (the Act). These issues include the development, implementation, and enforcement of programs required by the Act, with the exception of the provisions of the Act that address acid rain. The programs falling under the purview of the committee include those related to the National Ambient Air Quality Standards, emissions from vehicles and vehicle fuels, greenhouse gas emissions, air toxics, permitting and collecting fees, and other compliance authorities. The CAAAC may advise on issues that cut across several program areas.

The major objectives are to provide advice and recommendations on:

- a. Approaches for new and expanded programs, including those using innovative technologies and policy mechanisms to achieve environmental improvements.
- b. The potential health, environmental, and economic effects of Clean Air Act programs on the public, the regulated community, State and local governments, and other Federal agencies.
- c. The policy and technical contents of proposed major EPA rulemaking and guidance required by the Act in order to help effectively incorporate appropriate outside advice and information.
- d. The integration of existing policies, regulations, standards, guidelines, and procedures into programs for implementing requirements of the Act.

**4. Description of Committees Duties:**

The duties of the CAAAC are solely to provide advice to EPA.

**5. Official(s) to Whom the Committee Reports:**

The CAAAC will submit advice and recommendations and report to the EPA Administrator, through the Office of Air and Radiation.

**6. Agency Responsible for Providing the Necessary Support:**

The EPA will be responsible for financial and administrative support. Within the EPA, this support will be provided by the Office of Air and Radiation.

**7. Estimated Annual Operating Costs and Work Years:**

The estimated annual operating cost of the CAAAC is \$350,000, which includes 1.5 person-years of support.

**8. Designated Federal Officer:**

A full-time or permanent part-time employee of EPA will be appointed as the Designated Federal Officer (DFO). The DFO or a designee will be present at all meetings of the advisory committee and subcommittees. Each meeting will be conducted in accordance with an agenda approved in advance by the DFO. The DFO is authorized to adjourn any meeting when he or she determines it is in the public interest to do so, and will chair meetings when directed to do so by the official to whom the committee reports.

**9. Estimated Number and Frequency of Meetings:**

The CAAAC expects to meet approximately two to three times per year. Meetings may occur approximately once every four to six months or as needed and approved by the DFO. EPA may pay travel and per diem expenses when determined necessary and appropriate.

As required by FACA, the CAAAC will hold open meetings unless the EPA Administrator determines that a meeting or a portion of a meeting may be closed to the public in accordance with 5 U.S.C. 552b(c). Interested persons may attend meetings, appear before the committee as time permits, and file comments with the CAAAC.

**10. Duration and Termination:**

The CAAAC will be examined annually and will exist until the EPA determines the committee is no longer needed. This charter will be in effect for two years from the date it is filed with Congress. After this period, the charter may be renewed as authorized in accordance with Section 14 of FACA.

**11. Member Composition:**

The CAAAC will be composed of approximately forty (40) members who will serve as Representative members of non-federal interests, Regular Government Employees (RGEs), or Special Government Employees (SGEs). Representative members are selected to represent the points of view held by organizations, associations, or classes of individuals. In selecting members, EPA will consider candidates from business and industry, academic institutions, State, local and tribal governments, EPA officials, unions, public interest groups, environmental organizations and service groups.

**12. Subgroups:**

EPA, or the CAAAC with EPA's approval, may form CAAAC subcommittees or workgroups for any purpose consistent with this charter. Such subcommittees or workgroups may not work independently of the chartered committee and must report their recommendations and advice to the chartered CAAAC for full deliberation and discussion. Subcommittees or workgroups have no authority to make decisions on behalf of the chartered committee nor can they report directly to the Agency.

**13. Recordkeeping:**

The records of the committee, formally and informally established subcommittees, or other subgroups of the committee, will be handled in accordance with NARA General Records Schedule 26, Item 2 and EPA Records Schedule 181 or other approved agency records disposition schedule. Subject to the Freedom of Information Act, 5 U.S.C. 552, these records will be available for public inspection and copying, in accordance with the Federal Advisory Committee Act.

9/22/2017  
Agency Approval Date

10/1/2014  
GSA Consultation Date

\_\_\_\_\_  
Date Filed with Congress





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

AUG 24 2012

THE ADMINISTRATOR

The Honorable Barbara Boxer  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Dear Chairman Boxer:

I am pleased to renew the charter of the National Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The National Advisory Committee is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The committee will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina J. Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Lisa P. Jackson", is written over a horizontal line.

Lisa P. Jackson

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

**MAY - 8 2014**

OFFICE OF  
AIR AND RADIATION

The Honorable Hal Rogers  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Rogers:

Thank you for your letter of January 15, 2014, to U.S. Environmental Protection Agency Administrator Gina McCarthy. In the letter, you and your colleagues request a 60-day extension of the public comment period for the proposed "Standards of Performance for Greenhouse Gas Emissions from New Stationary Sources: Electric Utility Generating Units," also known as the Carbon Pollution Standards, which were published in the *Federal Register* on January 8, 2014. The Administrator has asked that I respond on her behalf.

The proposal included a public comment period of 60 days, which would have ended on March 10, 2014. We have now extended the public comment period on the proposed Carbon Pollution Standards for new power plants by an additional 60 days, to May 9, 2014. This will ensure that the public has sufficient time to review and comment on all of the information available, including the proposed rule, the notice of data availability, and other materials in the docket.

Again, thank you for your letter. If you have further questions, please contact me or your staff may contact Josh Lewis in the EPA's Office of Congressional and Intergovernmental Relations at [lewis.josh@epa.gov](mailto:lewis.josh@epa.gov) or (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read "Janet G. McCabe", is located below the word "Sincerely,".

Janet G. McCabe  
Acting Assistant Administrator

## Questions Submitted for the Record by Senator Boxer

**Question 1:** Given the importance of limiting carbon pollution and addressing climate change, increasing EPA's FY2015 Budget to address climate change is critical. Can you please explain how increased funding for the Agency's climate change work will ensure that state governments can efficiently implement and comply with any planned or existing Clean Air Act standard that establishes limits on carbon pollution from stationary sources?

**Answer:** The EPA's FY 2015 requested increase reflects funding for states to lay the ground work to support the President's Climate Action Plan and, in particular, activities associated with developing state plans to implement the carbon pollution guidelines for existing power plants. While state plans to address greenhouse gas emissions from the power sector are not due before 2016, FY 2015 will be an important year for states to build capacity and prepare for state plan development.

**Question 2:** The EPA's FY 2015 Budget supports implementation of the President's Climate Action Plan by calling for limits under the Clean Air Act on carbon pollution from cars, trucks, and power plants. Are these agency actions consistent with the Supreme Court decision in *Massachusetts v. EPA* (2007) and more recent decisions from the U.S. Court of Appeals for the D.C. Circuit?

**Answer:** The EPA's actions are consistent with the 2007 Supreme Court and U.S. Court of Appeals for the D.C. Circuit decisions.

**Question 3:** EPA's revolving loan programs for drinking and wastewater infrastructure help to ensure that the water we drink is safe and that our lakes and rivers are clean. EPA's budget request cuts funds for these important programs. Can you please explain how EPA will ensure adequate investments in clean water and drinking water are being made?

**Answer:** The FY 2015 budget request balances environmental protection with fiscal realities. This request supports the continued work of the State Revolving Fund (SRFs) in ensuring that small and underserved communities have access to funding that helps address their water infrastructure needs. Over the course of the life of the SRFs, approximately \$130 billion in assistance has been provided to projects, from all sources, including federal, state match, net leveraged bond, repayment of loan principal, and others. Since FY 2009, over \$22 billion in federal capitalization funding has been provided to the SRFs.

**Question 4:** The EPA has reported on the impressive and immediate health and environmental benefits of the National Diesel Emission Reduction Act Program, including significant reductions in air pollutants such as NOx and Particulate Matter. I am concerned that the EPA's budget asks to eliminate funding for this very successful program. Can you please explain how the Agency will make new gains in reducing air pollution from diesel engines and how the Agency will ensure continuing public health and environmental benefits from such air pollution reductions?

**Answer:** The EPA must make difficult choices to prioritize its activities. While the DERA grants accelerate the pace at which dirty engines are retired or retrofitted, pollution emissions from the legacy fleet will be reduced over time without additional DERA funding as portions of the fleet turnover and are replaced with new engines that meet modern emission standards. However, even with attrition through fleet turnover, approximately 1.5 million old diesel engines would still remain in use in 2030. Ongoing projects will continue to clean the air and support jobs during FY 2015, as the Agency continues to support and administer projects that have already received funding.

**Question 5:** The President's Executive Order on Chemical Safety directs the Federal Working Group to identify actions that will better protect people from hazards at chemical facilities. I recently held a hearing on the Executive Order and was concerned that the Working Group has identified few actions to improve oversight. I believe that we must move forward as rapidly as possible. Delay is unacceptable.

As a follow-up to the hearing, I asked the EPA witness to provide the Committee with a detailed explanation of how the Federal Working Group has met each of the required actions in the Executive Order and to provide the Committee with quarterly status updates on implementation of the Executive Order. Will you ensure that EPA responds to this request as soon as possible?

**Answer:** President Obama issued Executive Order (EO) 13650 - *Improving Chemical Facility Safety and Security* on August 1, 2013, to enhance the safety and security of chemical facilities and reduce risks associated with hazardous chemicals to facility workers and operators, communities, and responders. The Executive Order directed Federal departments and agencies to:

- Improve operational coordination with, and support to, State and local partners;
- Enhance Federal agency coordination and information sharing;
- Modernize policies, regulations, and standards; and
- Work with stakeholders to identify best practices.

On June 6, the Working Group's report to the President, entitled *Actions to Improve Chemical Facility Safety and Security – A Shared Commitment* was released. The report highlights activities undertaken to improve chemical facility safety and security and provides a consolidated plan of actions to further minimize chemical facility safety and security risks. The Working Group has implemented a number of actions since the release of the EO. A description of these actions can be found at: [https://www.osha.gov/chemicalexecutiveorder/EO\\_Fact\\_Sheet\\_060514.pdf](https://www.osha.gov/chemicalexecutiveorder/EO_Fact_Sheet_060514.pdf). Regarding periodic updates, EPA plans to continue to provide the Committee with regular updates on actions implemented under EO 13650.

**Question 6:** In December 2008, a devastating coal ash spill occurred in Kingston, Tennessee. More recently, an EPA-listed high hazard coal ash impoundment at a Duke Energy facility in North Carolina spilled into the Dan River threatening drinking water supplies down river from the facility. How will the Agency ensure that when it completes final rules concerning the disposal of coal ash later this year that there are adequate federal protections in place to protect communities near coal ash impoundments from this hazardous material?



**Answer:** The Agency is continuing to review and analyze more than 450,000 comments on the proposed Coal Combustion Residuals (CCR) rule. These comments raised a number of complex issues. In addition, EPA has solicited and received additional technical data. EPA continues to work to address these issues and will finalize the rule pending a full evaluation of all the information and comments received.

On May 2 of this year, a consent decree was entered, which establishes a deadline for EPA to take final action on the CCR proposed rule by December 19, 2014. The Agency plans to meet this deadline.

**Question 7:** EPA's Office of Inspector General recently completed an investigation of EPA's actions in the Parker County, Texas groundwater contamination case. OIG found that EPA acted appropriately when it issued an emergency order in that case, and when EPA lifted the order after the State agreed to investigate. However, OIG questioned the quality of data provided by Range Resources and whether residents in the community may still have unsafe drinking water. EPA agreed to take specific steps in response to the OIG's recommendation, including requesting additional information from Range Resources. Can you please provide an update on the status of EPA's implementation of the OIG's recommendations?

**Answer:** EPA has completed corrective actions addressing the Office of Inspector General's recommendations regarding the Range Resources matter. As part of these actions, the EPA requested, and Range Resources provided, additional quality assurance/quality control data associated with sampling undertaken by the company. The agency shared that data with the Texas Railroad Commission, the lead state agency charged with overseeing oil- and gas-related activities in Texas, on December 5, 2013, and at this time has not found any potentially significant data quality concerns. The EPA does not believe that the sampling data collected by Range Resources calls for further action by the EPA at this time.

**Question 8:** According to the Agency indoor radon is the nation's second leading cause of lung cancer and causes about 21,000 deaths each year. About one in 15 American homes contain high levels of radon. I am concerned that EPA's budget would cut funding for state and tribal grants to address this preventable cause of cancer. Can you please explain how the Agency will ensure that the public is properly protected from the threat of radon and how the public will have continued access to state and tribal programs that can assist them in reducing their risk of exposure to dangerous levels of radon?

**Answer:** Eliminating the State Indoor Radon Grants (SIRG) program is an example of the hard choices the Agency has made in this budget to help meet the nation's fiscal challenges. The Radon Program will continue to be a priority for the EPA and will continue to focus on radon risk reduction in homes and schools. The EPA will engage in public outreach and education activities, encourage radon risk reduction as a normal part of doing business in the real estate marketplace, promote local and state adoption of radon prevention standards in building codes, and participate in the development of national voluntary standards (e.g., mitigation and construction protocols) for adoption by states and the radon industry.

The EPA will drive action at the national level with other Federal agencies (through the Federal Radon Action Plan) to reduce radon risk in homes and schools using partnerships with the private sector and public health groups, information dissemination, participation in the development of codes and standards, and social marketing techniques. These actions are aimed at fixing homes and schools when radon levels are high and building new homes and schools with radon resistant features.

**Question 9:** I have been a strong supporter of EPA working to protect children's health from dangerous air and water pollution. EPA's budget increases environmental justice funding to improve environmental conditions in minority and low-income communities across the country and to enhance enforcement of clean air and other protections in at-risk communities, near schools and in other areas where children may be exposed to toxic pollution. Can you please describe how the Agency will use this budget request to strengthen environmental protections for these communities and enhance the environmental health of the country's most vulnerable populations?

**Answer:** The requested resources will deliver direct support and technical assistance to communities with environmental justice concerns and their partner organizations that are working to directly address the adverse environmental and public health issues impacting their residents. The emphasis will be on addressing the most vulnerable populations such as children and the elderly, and ensuring greater environmental protection and achieving visible differences in these communities. The request will also be used to increase outreach as well as collaboration and leveraging of resources between stakeholders (other federal agencies, state/local government, business, and NGOs) involved in community-based activities. This will include educating partners about aligning their community-based resources and investments while also supporting the capacity of these communities to address pollution problems.

These efforts also include further integration of the Agency's community-based efforts and investments (Tribal, Brownfields, Superfund, Air Toxics, Urban Waters/Green Infrastructure, and Sustainable Communities) in minority and low-income communities with environmental justice issues, to maximize community benefits and provide greater protection and tangible benefits as a result of these programs. For example, activities could include working with colleagues in other EPA offices to better align Agency brownfield site investments to include elements of green infrastructure which are also part of a community-focused area-wide planning initiative. Additionally, in past years, EJ assistance efforts to over 1,000 communities through various grant programs and technical assistance to approximately 30-40 communities through the Technical Assistance Services to Communities (TASC) contract, have enhanced their abilities to actively participate in decision making processes that affect their communities and broadened their skills and capacity to effect environmental changes such as remediation, clean up, education and research, the benefits of which is a healthier environment.

**Question 10:** In December 2013, in response to the OIG's Early Warning Reports in the John Beale fraud case, the EPA has taken a number of corrective actions to prevent future occurrences of such fraud. Can you please confirm your commitment to providing regular updates on the progress the Agency has made in addressing the issues raised in the OIG's report?



**Answer:** Yes, the EPA is pleased to confirm its commitment to providing updates. At this time, we can report a prompt and proactive effort that has produced substantial progress. In December 2013, the EPA released the *Report of Evaluation and Corrective Actions* which identifies areas where the Agency was taking, has taken, or was considering taking corrective actions. In April 2014, the EPA completed a second, more thorough review of issues in its *Report on Internal Control Assessments of EPA's Sensitive Payment Areas*. This report used GAO-standard procedures<sup>1</sup> for assessing internal controls, looking at seven areas: executive payroll approvals; employee departures; statutory pay limits; parking and transit subsidies; retention incentives; travel reimbursements; and executive travel approval. This report was provided to the EPA's Inspector General on April 17, 2014. While work continues to implement and ensure ongoing compliance with corrective actions, the Agency is working aggressively to prevent future fraud. The Agency will be pleased to continue to report on future progress.

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<sup>1</sup> <http://www.gao.gov/greenbook/overview>



### **Questions Submitted for the Record by Senator Markey**

**Question 1:** It's been nearly 4 years since the Deepwater Horizon drilling rig sank into the Gulf of Mexico causing an environmental catastrophe at a magnitude never seen in this country. In our frantic response to the oil that was gushing into the Gulf we used unprecedented amounts of chemical dispersants over an extended period of time. We also applied these dispersants under the water, in a way they were never intended to be used. Concerns about the toxicity and environmental impacts of the primary chemical dispersant used, known as Corexit, led the EPA to announce that it would be doing additional research and would propose changes to the list of approved chemical dispersants and other remediation agents.

a. When can we expect that these changes will be published?

**Answer a:** EPA expects to publish proposed revisions to the regulatory requirements associated with dispersants in summer 2014.

b. Will these changes incorporate the results of the impacts of prolonged and/or subsurface use of dispersants?

**Answer b:** Yes, the changes will address prolonged and/or subsurface use of dispersants.

**Question 2:** The NPDES permit for the Pilgrim Nuclear Power Station has been administratively extended by EPA for almost 20 years. When will the EPA complete its work to update the permit in a comprehensive manner?

**Answer:** The EPA is working on developing a NPDES permit for the Pilgrim Nuclear Power Station with the goal of issuing a draft permit for public notice by the end of September 2014.

**Question 3:** In 2011, EPA granted a three-year exemption from regulation under the Clean Air Act for carbon emissions from bioenergy facilities. EPA then commissioned an expert panel of the Science Advisory Board to review the Agency's proposed bioenergy carbon accounting framework. They found that EPA's framework needed to account for the important ongoing role that forests play in sequestering atmospheric carbon dioxide and that we cannot automatically assume biomass energy is carbon neutral. Basically, you can't cut down a 150 year old forest, burn it, and assume there's no net carbon impacts. In 2012, my home state of Massachusetts published final carbon accounting regulations using a methodology very similar to those recommended by the Science Advisory Board. Does EPA plan to incorporate these key science-based recommendations into whatever new rules are established to govern carbon emissions from bioenergy?

**Answer:** As detailed in the President's Climate Action Plan, part of the strategy to address climate change will include fostering expansion of renewable resources and responsible forest

management. A science-based approach to considering biogenic CO<sub>2</sub> emissions is a priority for the EPA. While the technical and methodological considerations are complex, the Agency is continuing to explore an approach that is based on a variety of factors. We appreciate that stakeholders are interested in an approach which allows for consideration of the unique attributes of biogenic feedstocks (as compared to other feedstocks such as coal) as a way to provide certainty and flexibility in the permitting context. The EPA is considering the range of approaches, supported by the science, that provide such opportunities. Currently, the EPA is working on revisions to the 2011 Framework that respond to the Science Advisory Board's comments and also consider the latest scientific analyses. In addition to the technical analyses, the EPA is evaluating the policy and legal implications of the range of approaches.

## Questions Submitted for the Record by Senator Vitter

### Topic: John Beale and Internal Controls

**Question 1:** During the hearing, you attributed the time lapse between when you first learned of John Beale's illegal bonus and when you finally cancelled the bonus to "it taking a while to get to the bottom of the John Beale issue because he was a criminal that had systemically intended to defraud the agency." The January 12, 2011 memorandum you received from Scott Monroe detailed both how "EPA policy requires that OAR recertify the bonus annually and re-establish the bonus every three years" and how "EPA had no records to show that these recertifications occurred except for one in 2000."

- a. Did it occur to you upon receipt of the January 12, 2011 memorandum that you had not ever signed annual certification paperwork for Beale's bonus despite having headed OAR at that point for a year and a half?

**Answer:** You are correct that during my time as Assistant Administrator of the Office of Air and Radiation, I did not recertify Mr. Beale's retention bonus. When I developed concerns about Mr. Beale's retention incentive I sought the assistance of senior managers responsible for human resources to review the incentive.

**Question 2:** On July 16, 2010, Scott Monroe sent Beth Craig an email which stated unequivocally, "Regardless of the circumstances surrounding overpayment, OAR must submit a request if we intend to continue the retention bonus."

- a. The email indicates that in order for Beale to continue to receive his bonus, it must be affirmatively recertified. Is this an accurate statement of EPA policy?
- b. Did your office recertify the retention bonus?
- c. If you were aware that he was receiving his bonus in error, and that they bonus had not been recertified, why did EPA continue to pay Beale the unearned wages?

**Answer:** The EPA retention incentive policy set forth in EPA Pay Administration Manual 3155 TN (June 1991) requires an annual "recertification" of any retention incentive whether established for a period of one, two, or three years, to ensure the conditions under which the original incentive was granted are still valid. Unfortunately, as the Beale case illustrated, the annual recertification requirement was not well understood by requesting officials. The EPA has now implemented a number of internal controls and policy changes to ensure retention incentive pay justification and recertification requirements are clearly understood by requesting officials and receiving employees.

During my time as Assistant Administrator, the Office of Air and Radiation did not recertify Mr. Beale's retention bonus. When I developed concerns about Mr. Beale's retention incentive, I sought the assistance of senior managers responsible for human resources to review



the incentive. Under the circumstances, it was prudent to verify information before acting on it. Mr. Beale is now serving over two years in prison for his criminal fraud and has, to date, paid the government nearly \$900,000 in restitution and \$500,000 in forfeiture.

**Question 3:** The January 12, 2011 memorandum you received from Scott Monroe also noted that retention incentives require a showing that there exists a "'special agency need' to retain the employee's services" and a showing that the employee is "'likely to leave,'" a showing which requires a written offer for outside employment, both of which Monroe suggested that Beale "did not appear to meet." Despite these obvious shortcomings, you allowed more than two years to pass before cancelling the bonus in February of 2013. During this time, Mr. Beale collected more than \$90,000 in unearned bonuses.

- a. Why was further investigation before cancelling his bonus necessary when Scott Monroe had already demonstrated that the lack of necessary recertifications since 2000?
- b. Why was further investigation before cancelling his bonus necessary when Scott Monroe had already indicated a lack of necessary documentation to meet the "likely to leave" requirement?
- c. Given the high standard for receiving retention incentives, did you-as Mr. Beale's direct supervisor-believe that there existed a "'special agency need' to retain" Mr. Beale's services? If not, why was further investigation before cancelling his bonus necessary?
- d. At the time you permitted the bonuses to continue, did you believe that Mr. Beale was "likely to leave" and had written evidence of outside job offers?

**Answer:** Neither OPM regulations nor EPA policy in place at the time required a written job offer to support a retention incentive. Having said that, I never authorized a retention incentive for Mr. Beale. Rather, when I developed concerns about Mr. Beale's retention incentive I sought the assistance of senior managers responsible for human resources to review the incentive. Under the circumstances, it was prudent to verify information before acting on it. While there was a delay in taking action, Mr. Beale is now serving over two years in prison for his criminal fraud and has, to date, paid the government nearly \$900,000 in restitution and \$500,000 in forfeiture.

**Question 4:** Despite the fact that you knew with certainty that the necessary criteria to receive a retention bonus had not been met two years before you took action to cancel the bonus, you had the audacity to assert the following: "What is true is I did pursue that issue [of Beale's illegal bonus] effectively, and I think the Agency was addressing it effectively."

- a. Please provide your definition of "effective."
- b. What would be an ineffective response to such clear warning signs?

**Answer:** When I developed concerns about Mr. Beale's retention incentive, I sought the assistance of senior managers responsible for human resources to review the incentive. Under the circumstances, it was prudent to verify information before acting on it. While there was a delay in taking action, Mr. Beale is now serving over two years in prison for his criminal fraud and has, to date, paid the government nearly \$900,000 in restitution and \$500,000 in forfeiture.

**Question 5:** What is the foundation of your claim that EPA responded to the issue of Beale's illegal bonus "effectively" when it was allowed to continue without the necessary recertification for more than a decade, during the last two years of which multiple officials were aware of its failure to meet multiple necessary criteria?

**Answer:** When I developed concerns about Mr. Beale's retention incentive, I sought the assistance of senior managers responsible for human resources to review the incentive. Under the circumstances, it was prudent to verify information before acting on it. While there was a delay in taking action, Mr. Beale is now serving over two years in prison for his criminal fraud and has, to date, paid the government nearly \$900,000 in restitution and \$500,000 in forfeiture.

**Question 6:** During the hearing, you responded to one of my questions ("Why, in early 2011 were you reluctant to finalize, to not cancel the bonus? Why were you reluctant to take action?") with the following response: "Actually, I understood that the issue was going to be referred to the Office of the Inspector General." According to the documents made available to the Committee, the first mention of even potentially referring the Beale matter to the OIG occurred only in spring of 2012.

- a. Were you in fact aware of plans to refer the Beale matter to the OIG in 2011?
- b. If so, please provide a detailed description of when and from whom you first heard of plans to refer Beale's compensation issues to the OIG, of whom you were aware had knowledge of the possibility that the Beale matter might be referred to the OIG, and of what you believed came of this plan to refer the matter to the OIG. Please also provide all documentation predating April 1, 2012 in your possession referring to Beale and the OIG in conjunction with each other.
- c. If you incorrectly stated that you believed that the matter was to be referred to the IG, then why in fact were you reluctant to finalize the cancellation of Beale's bonus in early 2011?

**Answer:** When I developed concerns about Mr. Beale's retention incentive I sought the assistance of senior managers responsible for human resources to review the incentive. Similarly, I sought assistance when I became concerned about Mr. Beale's attendance record. Under the circumstances, it was prudent to verify information before acting on it. While there was a delay in taking action, Mr. Beale is now serving over two years in prison for his criminal fraud and has, to date, paid the government nearly \$900,000 in restitution and \$500,000 in forfeiture.



**Question 7:** During the hearing, I quoted from an email produced to me by the OIG from Susan Smith, a Team Leader in the Executive Resources Division of the Office of Administration and Resource Management, to Karen Higginbotham, the Director of the Executive Resources Division. In the email, Ms. Smith attests to Ms. Higginbotham that "Scott Monroe stopped by ... and said .... that Gina is reluctant to finalize [the cancellation of Beale's retention incentive bonus] unless OARM (Craig) gives her the okay that the White House is aware and there will not be any political fallout." You not only expressed unfamiliarity with the email and represented that you had never had a conversation with Ms. Smith, but also asserted that: 1.) you had never spoken with Scott Monroe about the White House in regards to the Beale bonus matter, 2.) you were never concerned "that the White House would look at political fallout," and 3.) you "never had concerns about the White House's interference."

- a. Have you ever communicated with anyone at the White House about the Beale matter? If so, please describe these communications to the best of your ability, including the date of the interaction and the individual with whom you interacted. If any documentation exists of such communications, please provide them to the Committee.
- b. Did you ever communicate with Craig Hooks, Scott Monroe, or anyone else about the White House in connection to John Beale's misconduct? If so, please describe these communications to the best of your ability, including the date of the interaction and the individual with whom you interacted. If any documentation exists of such communications, please provide them to the Committee. If not, was Mr. Monroe fabricating these concerns?
- c. Have you ever been concerned about the potential for "political fallout" from the Beale investigation? If so, what sort of "political fallout"? Please describe in detail.
- d. Were you aware of anyone within EPA, or the Obama Administration more broadly, who was concerned about the potential for "political fallout" from the Beale investigation? If so, please identify these individuals and your impressions of their concerns.
- e. Were any of your actions in the investigation of Beale's misconduct shaped by the potential for "political fallout"?
- f. Why did you tell the OIG that the only "political fallout would have been during your confirmation hearing"? Were you concerned that Beale would be an obstacle to your confirmation as EPA Administrator?

**Answer:** I did not consult with anyone in the White House about the appropriate course of action to take in response to John Beale's pay and attendance issues. While an incident of this nature can lead to questions during the confirmation process and Mr. Beale's misconduct has been the focus of multiple Congressional Oversight hearings and requests, this level of attention occurred after the retention incentive was cancelled and after the matter was referred to the Office of Inspector General.

When I developed concerns about Mr. Beale's retention incentive and his attendance record, I sought the assistance of appropriate EPA employees. Under the circumstances, it was prudent to verify information before acting on it. This was not based on a concern about political fallout, but on a desire to verify Mr. Beale's status. While there was a delay in taking action, Mr. Beale is now serving over two years in prison for his criminal fraud and has, to date, paid the government nearly \$900,000 in restitution and \$500,000 in forfeiture.

**Question 8:** During the hearing, you challenged my criticism of Beale being allowed to retire by noting that "every employee has their right to retirement" and that you are "sure he exercised that right."

- a. Did you have cause to fire Beale in April 2013?
- b. Did Mr. Beale have a "right" to retire?
- c. Does every EPA employee facing potential discipline and/or termination have the "right" to retire with full benefits first?

**Answer:** Although EPA management was aware in April 2013 of information pointing to serious misconduct on the part of Mr. Beale, at that time his misconduct was also the subject of an EPA Office of the Inspector General (OIG) investigation. As is customary, once the EPA referred the matter to the OIG for investigation and learned the matter may result in criminal prosecution, the EPA prioritized the criminal investigation and deferred administrative action until the OIG completed its review and provided a final report to the EPA.

A Federal employee's ability to retire – even in the face of potential disciplinary action – is controlled by Federal law, not EPA policy. An employee, like Mr. Beale, who is eligible to retire under the applicable statutes and regulations, may submit an application for retirement which is ultimately approved or disapproved by the Office of Personnel Management. EPA has no authority to prevent a retirement eligible employee from applying for retirement.

**Question 9:** During the hearing, you also challenged my criticism of Beale being allowed to retire by noting that he is currently in federal prison. This suggests that you view prosecution by the Department of Justice as a sufficient substitute for adequate internal EPA controls and actions. Is that an accurate reflection of your views?

**Answer:** The EPA has internal controls in place, and we are working to update these controls as well as to improve clarity and accountability. These improvements are being actively integrated into the Agency's processes. In April, the EPA completed its *Report on Internal Control Assessments of EPA's Sensitive Payment Areas*. This report used GAO-standard procedures for assessing internal controls, identified deficiencies, and proposed corrective actions along with estimated completion dates for those actions.



The overwhelming majority of the approximately 16,000 EPA employees are dedicated, hardworking, professional public servants. Nonetheless, it is absolutely essential that EPA develop and maintain internal controls that ensure the accurate reporting of time and attendance and the fair and appropriate application of all EPA human resource policies.

**Question 10:** How many EPA employees have been terminated during your tenure as Administrator? How many employees within the Office of Air and Radiation were terminated during your time as Assistant Administrator?

**Answer:** According to Agency records, from July 18, 2013 (Gina McCarthy's confirmation as Administrator to the EPA) until May 1, 2014 (date of data pull), 11 EPA employees have been terminated. From June 2, 2009 (Gina McCarthy's confirmation as Assistant Administrator to the Office of Air and Radiation) until July 18, 2013 (Gina McCarthy's confirmation as Administrator to the EPA), 8 Office of Air and Radiation employees were terminated.

**Question 11:** During the hearing, you responded to a question from Senator Whitehouse by describing Beale as an outlier who is not representative of the EPA workforce. Nevertheless, you told the OIG that "Beale 'walked on water at EPA' due to his work on the [Clean Air Act] and other policy issues in the early 1990s." Furthermore, during your time as his direct supervisor as Assistant Administrator, you effusively praised Beale in emails to the entire Office of Air and Radiation. Additionally, even as Beale was sentenced to 32 months in federal prison for his crimes, he was offered strong support from a number of current and former senior EPA employees. They submitted letters, which went much further than calling him "a good man." Indeed, they called him a "tower of fortitude" and a man whom they still "respected ... immensely." One former colleague even said that "John is still one of the five people I would speed dial for help." How do you reconcile your claim that Beale was an outsider and not representative of the employees at EPA within the Office of Air and Radiation, with the praise offered by senior EPA officials on Beale's behalf even after he was exposed?

**Answer:** All of us at the EPA were offended by the fraudulent actions of Mr. Beale. He was an outlier in that the overwhelming majority of 16,000 EPA employees are dedicated, hardworking, and professional public servants, well-deserving of the public trust placed in the Agency.

**Question 12:** As Assistant Administrator for OAR, you sent multiple staff-wide emails praising Beale's performance. In one email you referred to his frequent absences from work and stated "we are keeping him well hidden so he won't get scooped away from OAR anytime soon." Yet, you told the OIG that you had suspicions over Beale from the moment you started at EPA.

a. Why did you believe he was such an exemplary employee?

- b. Why didn't you take any meaningful action on your suspicions?
- c. In light of your professed concerns over Beale from the moment you started at EPA, did you worry about the kind of example Beale set for other EPA employees?

**Answer:** Mr. Beale contributed legitimately to the work of the Agency during much of his career and I was unaware of his fraudulent conduct when I first joined the Agency in 2009. When I developed concerns about Mr. Beale's retention incentive and his time and attendance reporting, I sought the assistance of the appropriate EPA employees. Under the circumstances, it was prudent to verify information before acting on it. Mr. Beale is now serving over two years in prison for his criminal fraud and has, to date, paid the government nearly \$900,000 in restitution and \$500,000 in forfeiture. The overwhelming majority of the approximately 16,000 EPA employees are dedicated, hardworking, professional public servants.

**Question 13:** What verification mechanisms exist to ensure that employees do not continue collecting paychecks after they stop working?

**Answer:** The EPA has procedures in place to handle employee separations in situations of death in-service, retirement, and other separations. In the case of separations other than due to death or retirement, the Agency follows a five-step process that, among other things, ensures employees do not continue collecting paychecks after they stop working. These steps are:

*Step 1:* Program Offices Issue SF-52 (Request for Personnel Action) to HR Shared Services Center (HR SSC);

*Step 2:* HR SSC Processes SF-52 and issues SF-50 (Notice of Personnel Action);

*Step 3:* HR SSC Prepares Benefits Separation Package;

*Step 4:* HR SSC Issues Separation Notice to the Defense Finance and Accounting Services (DFAS), et al.; and

*Step 5:* Offices follow Time and Attendance Procedures if not immediately removed from payroll.

In April 2014, the Agency also identified other steps to further ensure payments do not continue after employee separation (elimination of default pay and elimination of mass approval). These improvements are being integrated into the Agency's processes. In the event of inappropriate pay after separation, the Agency has and will continue to issue debt collection notices for any overpayment.

Finally, EPA is working on measures to increase clarity and accountability. These measures will include issuing an Executive Approval Framework and other guidance to notify employees and supervisors of the need to accurately submit and verify time and attendance.

**Question 14:** How many cases of suspected time and attendance fraud have you been made aware of during your tenure as Administrator? How many suspected instances have been



referred to you from an external source, and how many were discovered by you and those you supervise?

**Answer:** Where an instance of time and attendance fraud is suspected, EPA encourages such suspicion and any supporting information to be referred to the individual's supervisor and the EPA Office of Inspector General.

**Question 15:** How many cases of suspected time and attendance fraud had you been made aware of during your tenure as Assistant Administrator for the Office of Air and Radiation? How many suspected instances have been referred to you from an external source, and how many were discovered by you and those you supervise?

**Answer:** Where an instance of time and attendance fraud is suspected, EPA encourages such suspicion and any supporting information to be referred to the individual's supervisor and the EPA Office of Inspector General.

**Question 16:** Beale spent hundreds of thousands of taxpayer dollars on excessive travel. Yet, EPA employees signed off on his erroneous travel vouchers because they thought he was "special."

a. How much money does EPA spend on travel?

**Answer a:** In the FY 2015 President's Budget, the EPA budgeted \$42.2 million for personal travel, which is a 30% decrease from budgeted personal travel in the FY 2010 enacted budget. Recent EPA travel budgets have been historically low as demonstrated in the table below. In the past five fiscal years (FY 2011-FY 2015), the EPA budgeted personal travel has not exceeded \$44 million, while from FY 2006 to FY 2010, budgeted personal travel ranged from \$54-\$60 million.

The reduction in EPA's travel budget has been achieved through a decrease in the number of face-to-face meetings and increased use of video and teleconferencing. Recognizing tight government budgets, EPA has been judiciously reserving travel funds for priority travel and using technology whenever possible.

**Budgeted Travel: FY 2010-FY 2015**

*(Dollars in Thousands)*

|                     | <b>FY 2010<br/>ENA</b> | <b>FY 2011<br/>ENA</b> | <b>FY 2012<br/>ENA</b> | <b>FY 2013<br/>ENA</b> | <b>FY 2014<br/>ENA</b> | <b>FY 2015<br/>PB</b> | <b>% change<br/>'10 EN to<br/>'15 PB</b> |
|---------------------|------------------------|------------------------|------------------------|------------------------|------------------------|-----------------------|--|
| Travel,<br>Personal | \$60,507               | \$37,770               | \$43,944               | \$38,451               | \$38,549               | \$42,239              | -30.2%                                   |

b. Is there really a different standard for certain EPA employees' travel?

**Answer b:** The General Services Administration (GSA) promulgates the General Travel Regulation, which applies to agencies Federal Government-wide. Under that regulation and GSA guidance, there are certain circumstances where Agencies are authorized to approve special classes for employee travel. For example, "other than coach- class" may be used for air travel when it is "necessary to accommodate a medical disability or other special need." 41 CFR 301-10.123. The EPA's policies regarding official travel are consistent with GSA rules and guidance.

c. Who else is "special" at the EPA that can get away with this?

**Answer c:** All EPA employees, without exception, are expected to comply with applicable laws and regulations. In addition, the EPA has made several key improvements to our travel policies and procedures in an effort to prevent the type of fraud committed by Mr. Beale from being committed again.

**Question 17:** What is the process by which time and attendance problems are dealt with?

**Answer:** As the EPA Office of Inspector General's website<sup>2</sup> explains, the Agency's appropriate response to a time and attendance problem will vary based on the particular problem identified. Where an instance of time and attendance fraud is suspected, the EPA encourages such suspicion and any supporting information to be referred to the individual's supervisor and the EPA Office of Inspector General.

**Question 18:** As an organization, would you characterize the EPA as having a culture that values attention to proper time and attendance keeping?

**Answer:** Absolutely. The EPA's employees are generally honest and conscientious about proper time and attendance keeping, and well deserving of the public trust placed in the Agency.

**Question 19:** According to the Corrective Action Report of December 2013, EPA is migrating to a new payroll system in 2014. Please describe this new system. What features does it offer over the current system? Is the transition on schedule? How much did it cost?

**Answer:** The Department of the Interior's Interior Business Center (IBC) is an Office of Management and Budget and Office of Personnel Management approved Human Resources Line of Business (HRLoB) Shared Service Center. Interior Business Center's Federal Personnel/ Payroll System (FPPS) is an integrated human resources and payroll system used by numerous federal government entities. FPPS implements all current regulations, including specialized pay, garnishments, special appointment programs, and other payroll related functions.

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<sup>2</sup> <http://www.epa.gov/oig/>



FPPS integrates HR and payroll functionalities which was previously split between two separate systems at EPA, PeoplePlus and Defense Civilian Payroll System (DCPS). PeoplePlus was the HR system of record for EPA performing functions such as new hires, promotions, details, and separations. With the migration, PeoplePlus will no longer perform the HR services, serving only as the Time and Attendance system. EPA's former payroll provider was Defense Finance and Accounting Service (DFAS), and their payroll system is DCPS. This system has been fully replaced by FPPS.

Before migrating to this system, EPA relied on separate systems for HR processing and payroll processing, which required EPA to maintain a technical interface between the systems. In the past, HR and time & attendance data was sent from PeoplePlus to DFAS. Now, only time and attendance data is sent. Also, HR actions are input directly into the integrated FPPS system. In the past, HR actions were input into PeoplePlus and then sent at a later time through the interface to DFAS. This lag has been eliminated.

In addition, human resources related processes are now automated in the new system, which were formerly paper based. These features result in more accurate and faster processing of HR related actions. For example, one benefit of FPPS is that it provides the ability to stop retention incentive payments automatically by entering into the system the end date of the incentive payment.

The migration of EPA's HR and payroll services to IBC's FPPS system was implemented in June 2014 on schedule. The estimated fees that IBC will charge EPA for FY 2014 is \$2.1 million and \$4.4 million in FY 2015.

**Question 20:** According to the Corrective Action Report of December 2013, "Currently, the EPA is implementing a policy of "default pay" and "mass approval," where an employee will be paid for a full 80 hours over a pay period even if one step of the process fails to occur." Please explain the rationale behind this policy and how long has it been in effect.

**Answer:** Beginning in 2004, the EPA began using a time approval system that allowed for group approval (which allowed a manager to approve a group of employees at once), mass approval, and default pay. The group approval capability was removed in 2013, and the EPA is now implementing new approval mechanisms that will not allow for mass approval or default pay.

**Question 21:** According to the Corrective Action Report of December 2013, "the EPA also amended its time and attendance policy on June 20, 2013, and is currently engaged in negotiations with the agency's unions over the revised policy." Please detail the status of these negotiations.

**Answer:** Two EPA unions, ESC (Engineers and Scientists of California) and NTEU (National Treasury Employees Union), sought to negotiate over the changes to the time and

attendance policy. The agency resolved all issues with ESC in November, 2013 and with NTEU in January, 2014.

**Question 22:** According to the Corrective Action Report of December 2013, EPA said that it "expects to complete its review" of executive payroll approvals, employee departures and payroll, statutory pay limits, parking and transit subsidy, retention incentives, travel other than coach class travel, travel reimbursements above the government rate, and executive travel approval. According to this report, the reviews were supposed to be finished within 4 to 12 weeks. What is the status of each?

**Answer:** In April 2014, the EPA completed a review of each of these issues in its *Report on Internal Control Assessments of EPA's Sensitive Payment Areas*. This report used GAO-standard procedures<sup>3</sup> for assessing internal controls looking at all of the areas mentioned above, identified deficiencies, and proposed corrective actions along with estimated completion dates for those actions. On April 17, 2014, we delivered this Report to the EPA Office of Inspector General.

**Question 23:** According to the Corrective Action Report of December 2013, no EPA employees were then receiving a retention incentive. Is this still the case? When was there a major reduction in the number of people receiving them? Are they still available?

**Answer:** At present, there are no EPA employees receiving a retention incentive. Use of retention incentives at EPA has always been rare; only 28 employees have received such incentives since 1990. Previous retention incentives have ended through expiration, termination, or change in the employment status of the employee. While no employees are currently receiving a retention incentive, the program is available if incentives are properly justified, reviewed and approved.

**Question 24:** According to the Corrective Action Report of December 2013, "regulations also provide agencies with the ability to request a waiver from OPM of these caps up to 50% of an employee's salary." Are you aware of instances where an EPA employee exceeded the cap by 50%? What is the largest waiver you have encountered?

**Answer:** I am not aware of any instances in which EPA has sought this type of waiver and therefore there is no incident when a large waiver was encountered.

**Question 25:** How many EPA employees are currently receiving salaries that are above the statutory cap and require a waiver?

**Answer:** There are no EPA employees receiving salaries above the statutory cap.

**Question 26:** Please identify the position of every employee of the EPA who has exceeded the statutory pay cap during your tenure as Administrator, indicate by how much that employee exceeded the salary cap, and whether that employee received a proper waiver to do so.

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<sup>3</sup> <http://www.gao.gov/greenbook/overview>



**Answer:** Generally, there are three pay limitations applicable to federal employees. First, employees have a bi-weekly limit to pay. Second, employees are subject to an annual maximum earnings limitation which includes basic pay and premium pay. Finally, there is an aggregate limit to pay which includes annual basic pay plus premium pay, awards, allowances, and differentials.

No EPA employees have been paid beyond the aggregate limitation on pay (5 U.S. Code 5307 and 5 Code of Federal Regulations 530.203) during the Administrator's tenure. Further, there is no statutory basis for making an exception or waiver to the limitation (which is the pay rate of Executive Level I), and EPA compensation has not exceeded that limitation.

Relative to the annual maximum earnings limitation (5 U.S. Code 5547 (b) (2) and 5 Code of Federal Regulation 550.107), an exception may be made for premium pay work in conjunction with U.S. military contingency operations in designated locations and countries. EPA has experienced only one case of a claim for granting an exception to the annual maximum earnings limitation. For that single instance, an employee performed substantial premium pay work while on detail (under an interagency agreement to the U.S. Army Corps of Engineers) in Iraq during the latter half of 2012 and first half of 2013. The employee's basic pay plus premium pay compensation entitlement exceeded the annual maximum earnings limitation. EPA is presently conducting a thorough review of the claim to ensure accurate accounting and has not yet determined the full claim amount for that 2013 exception.

**Question 27:** Please identify the position of every employee of the Office of Air and Radiation who exceeded the statutory pay cap during your tenure as Assistant Administrator. Please also indicate by how much that employee exceeded the salary cap, and whether that employee received a proper waiver to do so.

**Answer:** During Gina McCarthy's tenure as Assistant Administrator of the Office of Air and Radiation (June 4, 2009 to July 18, 2013), there were no employees compensated beyond the annual maximum earnings limitation. The compensation of one employee, Mr. John Beale, exceeded the aggregate limitation (5 USC 5307) by \$5,920.00 and \$6,105.00, respectively in FY 2009 and FY 2010. Mr Beale received no waiver for the exceedance and has subsequently paid back all overpayments to the government.

**Question 28:** How many EPA employees have received subsidized parking during your tenure as Administrator? Please provide as specific of an answer or estimate as possible.

**Answer:** Approximately 290 EPA headquarters employees have received subsidized parking at the federal triangle complex at some point during 2013 or 2014.

**Question 29:** How many Office of Air and Radiation employees received subsidized parking during your tenure as Assistant Administrator? Please provide as specific of an answer or estimate as possible.



**Answer:** Approximately 76 EPA Office of Air and Radiation employees received subsidized parking at the federal triangle complex at some point between 2009 and 2013.

**Question 30:** On March 19 of this year, the Committee's minority staff published a 67-page report entitled *EPA's Playbook Unveiled: A Story of Fraud, Deceit, and Secret Science*, which documents how Beale coordinated abusive tactics in the rulemaking process behind the 1997 Ozone and Particulate Matter National Ambient Air Quality Standards and how the EPA adopted this system that he pioneered in numerous subsequent air quality regulations. In news reports, EPA representative Alisha Johnson downplayed Beale's role: "While Mr. Beale did work on the rules mentioned in the report, he was just one of a large number of people from a number of disciplines across the Agency who provided input on those rules."

- a. Is it not true, though, that Beale's bonuses and promotions were based in large part on his "key role" on one of the "most significant issues he managed": the 1997 Ozone and Particulate Matter NAAQS?
- b. Is it not true that in a staff wide email sent on December 3, 2010, you praised Beale for his "leading role" in the 1997 NAAQS review?
- c. In light of these incontrovertible facts, why is EPA now downplaying the role that even you claimed he had in setting the 1997 NAAQS?

**Answer:** While I was not with the U.S. EPA in 1997 or at the time Beale received his promotions or his first retention bonus, my understanding is that these were based on his legitimate work for the Agency.

Each review of the National Ambient Air Quality Standards (NAAQS) is an incredibly complex, technical and resource-intensive undertaking based on sound science and legal standards. While Beale played a visible role through his position at that time in the Office of Air and Radiation, his involvement in no way undermines the rational basis for the Agency's decisions nor the integrity of the administrative process. These rules were reviewed in the Supreme Court, which concluded in 2001 that costs of implementing the standards could not be considered in setting the standards. The PM standard was entirely upheld by the courts, and the ozone standard was upheld (with one small exception which did not require any changes in the standard). Since that time, both standards have been re-reviewed by the EPA.

**Question 31:** In EPA's justification for its proposed FY 2015 budget, the Agency requests Congress extend its authority under Title 42 to hire individuals to science and research positions at salary levels above the general service employee pay limit.

- a. Please list the employees who were hired under Title 42?

**Answer a:** The table below provides EPA's current on-board Title 42 employees.

| <b>FY Hired</b> | <b>OPM Position Classification</b>                 | <b>EPA/ORD Organization</b>   | <b>Science Expertise</b>   |
|-----------------|--|---|--|
| 2006            | Research Chemist (Bioinformatics)                  | National Center for Computational Toxicology (NCCT), Research Triangle Park, NC   | <ul style="list-style-type: none"> <li>• Leads cutting-edge research in systems models of cellular behavior.</li> <li>• International expertise in bioinformatics and predictive biochemical pathways.</li> </ul>  |
|                 | Research Physicist (Computational Systems Biology) | NCCT, Research Triangle Park, NC  | <ul style="list-style-type: none"> <li>• Heads innovative research in developing complex computational solutions to use models to characterize chemical exposure, hazard, or risk, such as ToxCast.</li> <li>• International leadership in creating informatics teams and in the area of genomics.</li> </ul>  |
|                 | Research Biologist (Systems Biology)               | National Health and Environmental Effects Research Laboratory (NHEERL), Integrated Systems Toxicology Lab, Research Triangle Park, NC | <ul style="list-style-type: none"> <li>• Leads the lab in initiating systems approaches in developing molecular biology methodologies.</li> <li>• International leadership in combining experimental and computational approaches to health effects of environmental contaminants.</li> </ul>                  |
| 2007            | Research Biologist (Developmental Systems Biology) | NCCT, Research Triangle Park, NC  | <ul style="list-style-type: none"> <li>• Heads ORD's research to develop complex systems level models of biological processes and tissues.</li> <li>• Provides international expertise in developmental biology, systems biology, genomics, and computational modeling.</li> </ul>                             |
| 2007            | Supervisory Research Biologist (Director)          | NHEERL/Environmental Public Health Lab/Clinical Research Center, Research Triangle Park, NC   | <ul style="list-style-type: none"> <li>• Leads ORD's research on pulmonary effects related to air pollution and sensitivity factors.</li> <li>• Brings international experience in the area of assessment and characterization of immunological and allergic diseases in response to air pollution.</li> </ul> |
| 2008            | Supervisory Research Biologist (Director)          | National Center for Environmental Assessment (NCEA), Research Triangle Park   | <ul style="list-style-type: none"> <li>• Directs ORD assessment of the health and environmental effects of single environmental pollutants and combinations of pollutants.</li> </ul>  |



| <b>FY Hired</b> | <b>OPM Position Classification</b>        | <b>EPA/ORD Organization</b>  | <b>Science Expertise</b>  |
|-----------------|---|--|---|
|                 |   | Center, NC   | <ul style="list-style-type: none"> <li>• Provides international expertise in health risk assessment and air pollutants research.</li> </ul>   |
| 2010            | Supervisory Chemist (Director)            | National Risk Management Research Laboratory (NRMRL), Sustainable Technology Lab, Cincinnati, OH | <ul style="list-style-type: none"> <li>• Leads ORD's development and application of models and tools to prevent, mitigate, and control environmental risks.</li> <li>• International expertise in green chemistry, engineering, and sustainability science.</li> </ul>  |
| 2011            | Supervisory Health Scientist (Director)   | NHEERL, Environmental Public Health Lab, Research Triangle Park, NC                              | <ul style="list-style-type: none"> <li>• Heads ORD's integrated, clinical, epidemiological, and laboratory animal based research program.</li> <li>• Brings international leadership in cardiac effects of air pollution on environmental exposure and risk identification and characterization.</li> </ul>   |
| 2011            | Supervisory Research Biologist (Director) | NHEERL Integrated Systems Toxicology Lab, Research Triangle Park, NC                             | <ul style="list-style-type: none"> <li>• Leads ORD's research in using systems biology approaches to describe normal biological, homeostatic processes and to identify key events that signal departure from those processes leading to adverse health outcomes.</li> <li>• International leadership in toxicology, molecular biology, pharmacology, and genetics.</li> </ul> |
|                 | Supervisory Biologist (Director)          | NHEERL, Toxicity Assessment Lab, Research Triangle Park, NC                                      | <ul style="list-style-type: none"> <li>• Directs ORD's integrated toxicology assessment research that incorporates developmental biology, reproductive biology, endocrinology, and neurosciences.</li> <li>• Provides international expertise in in vivo toxicology, neurological biology, reproductive and developmental biology, and source to effects models.</li> </ul>   |
|                 | Supervisory Physical Scientist            | National Exposure Research Laboratory  | <ul style="list-style-type: none"> <li>• Heads ORD's research into fate and transport of environmental stressors,</li> </ul>  |

| <b>FY Hired</b> | <b>OPM Position Classification</b>                                 | <b>EPA/ORD Organization</b>   | <b>Science Expertise</b>   |
|-----------------|--|---|--|
|                 | (Director)   | (NERL), Ecosystems Research Lab, Athens, GA   | including studies of the behavior of contaminants, nutrients, and biota in environmental systems.<br><ul style="list-style-type: none"> <li>• Provides international expertise in working with ecologists, chemists, fisheries biologists, geologists, and engineers.</li> </ul>   |
|                 | Supervisory Biologist (Director)                                   | NERL, Microbiological and Chemical Exposure Assessment Research Lab, Cincinnati, OH | <ul style="list-style-type: none"> <li>• Leads ORD's research on microbial ecology and the potential risk factors in natural and engineered water systems.</li> <li>• International leader in microbial ecology, chemistry, and physiology.</li> </ul>   |
| 2012            | Supervisory Biologist (Deputy Assistant Administrator for Science) | Office of the Assistant Administrator, Immediate Office, Washington, DC             | <ul style="list-style-type: none"> <li>• Leads all science and research in ORD.</li> <li>• Provides scientific foundation and leadership across ORD research programs.</li> <li>• International leader in the areas of developmental toxicology, endocrine disruption, benchmark dose analysis, and computational toxicology.</li> </ul>   |
|                 | Supervisory Biologist (National Program Director)                  | Air, Climate, and Energy National Research Program, Research Triangle Park, NC      | <ul style="list-style-type: none"> <li>• Provides the critical science to develop and implement the National Ambient Air Quality Standards under the Clean Air Act. The research program fosters innovative approaches to ensure clean air in the context of a changing climate and energy options.</li> <li>• Internationally recognized expert in the area of public health effects of air pollution, including inhalation and cardiovascular toxicology.</li> </ul> |
|                 | Supervisory Biologist (National Program Director)                  | Safe and Sustainable Water Resources Research Program, Washington, DC               | <ul style="list-style-type: none"> <li>• Heads ORD's research on developing new approaches for evaluating groups of contaminants for the protection of human health and the environment; developing innovative tools, technologies, and strategies for</li> </ul>  |

| <b>FY<br/>Hired</b> | <b>OPM Position<br/>Classification</b>                     | <b>EPA/ORD<br/>Organization</b>                            | <b>Science Expertise</b>  |
|---------------------|--|--|---|
|                     |  |  | <p>managing water resources; and supporting a systems approach for protecting and restoring aquatic systems.</p> <ul style="list-style-type: none"> <li>• Provides internationally recognized expertise in the areas of environmental sciences, toxicology, human health, and wetland restoration.</li> </ul>   |
| 2012                | Supervisory Environmental Engineer (Director)              | National Center for Environmental Research, Washington, DC | <ul style="list-style-type: none"> <li>• Leads and conducts highly recognized, leading edge, extramural research in the areas of exposure, risk assessment, and risk management. This includes supporting high-quality research by the nation's leading scientists and engineers that will improve the scientific basis for national environmental decisions.</li> <li>• Internationally recognized leader and expert in the area of environmental engineering, including hazardous waste management, treatment, and disposal.</li> </ul> |
|                     | Supervisory Physical Scientist (National Program Director) | Chemical Safety for Sustainability, Washington, DC         | <ul style="list-style-type: none"> <li>• Provides the scientific foundation for the chemical safety for sustainability program in order to advance environmental sustainability.</li> <li>• Leads international innovation in areas of chemical design and chemical impacts to human health and the environment.</li> </ul>   |
| 2012                | Supervisory Biologist (Director)                           | NCEA, Washington, DC                                       | <ul style="list-style-type: none"> <li>• Leads ORD's health and ecological assessment program to determine how pollutants may impact human health and the environment.</li> <li>• Internationally recognized leader and expert in toxicology and environmental health sciences.</li> </ul>  |



| <b>FY<br/>Hired</b> | <b>OPM Position<br/>Classification</b>                         | <b>EPA/ORD<br/>Organization</b>  | <b>Science Expertise</b>  |
|---------------------|--|--|---|
|                     | Supervisory<br>Environmental<br>Health Scientist<br>(Director) | NERL, Human Exposure<br>and Atmospheric<br>Sciences Lab, Research<br>Triangle Park, NC | <ul style="list-style-type: none"> <li>• Heads ORD's research effort to develop innovative approaches for assessing the fate, transport, and exposure to air pollutants from different sources and develop and apply tools for assessing aggregate exposures and cumulative risk to all stressors from all sources.</li> <li>• Internationally recognized expert in the area of human exposure and atmospheric sciences.</li> </ul>                           |
| 2013                | Associate Director<br>for Health                               | NHEERL, Research<br>Triangle Park, NC  | <ul style="list-style-type: none"> <li>• Leads NHEERL's health effects research program to assess the impact of chemical and other environmental stressors on human health that builds on systems biology thinking employing a variety of approaches such as in vivo, in vitro, and in silica technologies.</li> <li>• International recognition in the areas of gene regulation, toxicokinetics and toxicogenomics, and developmental toxicology.</li> </ul> |
|                     | Supervisory<br>Toxicologist<br>(Director)                      | NCCT, Research Triangle<br>Park, NC  | <ul style="list-style-type: none"> <li>• Heads ORD's research into the application of mathematical and computer models to technologies derived from computational chemistry, molecular biology, and systems biology.</li> <li>• Brings international leadership and experience in the areas of genomic biology, bioinformatics, and chemical safety sciences.</li> </ul>  |
| FY 2014             | Supervisory<br>Biologist<br>(Director)                         | NRMRL, Kerr Lab, Ada,<br>OK  | <ul style="list-style-type: none"> <li>• Leads NRMRL's research into the interactions of technical, economic, and social factors which affect current and future demands on water resources.</li> </ul>   |

| FY Hired | OPM Position Classification | EPA/ORD Organization | Science Expertise   |
|----------|-----------------------------|----------------------|---|
|          |                             |                      | <ul style="list-style-type: none"> <li>• International recognition on subsurface resources, water quality, nutrient cycling, and ecosystems research and management.</li> </ul> |

b. What is the salary range for current EPA employees hired under Title 42?

**Answer b:** The Title 42 salary range is from the GS-15 step 10, with locality pay, to \$250,000.

**Question 32:** In EPA's justification for its proposed FY 2015 budget, the Agency requests Congress remove the ceiling under Title 42, which limits the hiring of 50 persons to science and research positions at salary levels above the general service employee pay limit.

a. How many persons would EPA hire under Title 42 if there was no ceiling?

**Answer a:** As recommended by the National Academy of Sciences in its 2010 report on EPA's Use of Title 42, EPA would determine the number of people to hire under Title 42 based on our programmatic needs and available budget.

b. What area of science and research does EPA need more employees under Title 42?

**Answer b:** Title 42 appointments in the following fields, for example, would benefit research efforts across our research organizations and help provide the transformative innovative scientific leadership to meet the Agency's mission requirements:

- Systems biology
- Integrated modeling
- Exposure informatics
- Predictive toxicology
- Epidemiology
- Integrated chemical hazard assessment
- Ecology
- Methods development
- Life-cycle analysis

#### Topic: CASAC

**Question 33:** From March 25-27, 2014, the Clean Air Scientific Advisory Committee (CASAC) ozone review panel met to review national ambient air quality standards for ozone. The



composition of CASAC is not only critical to the impending ozone standards, but in the context of EPA's proposed FY 2015 budget, it is critical given the massive amount of federal research grants these panelists have received to produce work they are reviewing as CASAC panelist, essentially creating a scientific revolving door. Yet, the Agency has continued to deny public access to the underlying science at the same time it continues to issue more grants to the same researchers.

- a. In light of these facts, are you aware that 75% (15 out of 20) of the CASAC ozone review panelists have received EPA research grants?
- b. Are you aware that those 15 panelists have received over \$180.8 million in EPA research grants?
- c. Is this a conflict of interest? If not, why not?

**Answer:** The CASAC procedures and policies are transparent, publically available, and supported by its members. These policies assure that these advisory committees provide a balance of perspectives and appropriate scientific expertise. Procedures are in place to address issues such as conflict of interest, including public disclosure of any information that could create an appearance of bias. In seeking the best advice, the EPA looks to nationally and internationally renowned scientists to ensure the work we do is based on sound, credible science. These scientists are often cutting edge experts in the area of air pollution. Thus, it is no surprise that some compete successfully for research grants – from the EPA and from others such as NSF and NIH. OMB's peer review guidance explicitly recognizes that research grants that were awarded to the scientist based on investigator-initiated, competitive, peer-reviewed proposals, do not generally raise issues of independence.

**Question 34:** In our private discussions, prior to your nomination, you stated that "legitimate scientists" would be provided access to underlying data. How does the agency define a "legitimate scientist" and "legitimate scientific inquiry?"

**Answer:** There are many studies across the scientific disciplines that use publicly available data sets that are included in the Integrated Science Assessments (ISAs) for ozone and PM. The EPA maintains a comprehensive list of all studies included in these assessments in its publicly available Health & Environmental Research Online (HERO) database (<http://hero.epa.gov/>). In many studies, however, scientific protocols require that authors not report underlying data pertaining to personal confidential medical information to protect the privacy of study participants. The EPA understands that it is important to increase transparency and public access to information, but it also is essential to protect the privacy of individuals who have served as subjects in studies along with their personal health information. For this reason, research institutions that hold these data have detailed requirements and procedures for accessing their data. For example, the American Cancer Society (ACS) clearly states that investigators who are not employed in ACS' Epidemiology Research Program may request relevant data to conduct a study. There are, however, data access policies and procedures, which are clearly outlined at <http://www.cancer.org/acs/groups/content/@research/documents/document/acspc-039148.pdf>.



### Topic: White House Inference with Congress

**Question 35:** On June 13, 2013, Kevin Minoli, Acting General Counsel, sent the White House an email asking for permission to release 106 emails to Chairman Issa and Ranking Member Vitter. These 106 emails were also subject to Ranking Member Vitter's negotiations over your confirmation as EPA Administrator. The EPA did not turn over these documents, and only did so AFTER Congress subpoenaed the documents. Accordingly, it appears that the White House acted to obstruct a Congressional investigation. Since the discovery of this email, Chairman Issa has issued a subpoena for all documents in EPA's possession that relate to this obstruction.

- a. Ms. McCarthy, according to an email obtained by the Committee – it appears that EPA sought White House permission to release 106 documents to me and Chairman Issa last June. EPA did not release these documents until Issa issued a subpoena in September 2013. Did the White House ever instruct you or EPA official to withhold these documents from Congress?
- b. Is it common practice for EPA to seek the White House's permission to respond to a Congressional request, even when White House equities are not involved?
- c. Did EPA do so in this case?
- d. Why did EPA refuse to turn over the documents in question until a subpoena had been issued?
- e. Why has EPA not complied with the most recent subpoena for documents relating to White House interference with a Congressional Investigation?

**Answer:** It is common practice for the EPA, in every administration to appropriately consult with various offices within the White House including the Council on Environmental Quality, the Office of Management and Budget, and the White House Counsel's Office. The EPA did consult with the Office of White House Counsel on this particular request for documents, though the ultimate decisions regarding appropriate handling of the documents were made by the EPA. The EPA respects Congress's important oversight role and strives to respond to all requests from Congress, regardless of whether those requests are made in the context of a letter or a subpoena.

### Topic: New Source Performance Standards (NSPS)

**Question 36:** When EPA evaluated whether the cost of electricity from a new power plant using CCS is reasonable, did EPA rely on the cost of the technology at its current status as an emerging technology for power plants or did EPA look at what the costs are projected to be when CCS reaches the status of a fully mature technology?

- a. What are the differences in cost between CCS in its current status and when it reaches status as a fully mature technology?
- b. Has the Department of Energy shared with EPA how long before CCS is considered a fully mature technology and cost competitive for power plants?
- c. Mr. Julio Friedmann, Deputy Assistant Secretary at the Department of Energy is an expert in CCS technologies. He recently testified that early stage deployment of CCS for new power plants would increase the costs of wholesale electricity by approximately "70 to 80 percent." Does EPA dispute the validity of this statement?

**Answer:** For an emerging technology like CCS, costs can be estimated for a "first-of-a-kind" (FOAK) plant or an "nth-of-a-kind" (NOAK) plant, the latter of which has lower costs thanks to the "learning by doing" and risk reduction benefits that result from serial deployments as well as from continuing research, development, and demonstration projects.

For plants that utilize technologies that are not yet fully mature and/or which have not yet been serially deployed in a commercial context, such as IGCC or any plant that includes CO<sub>2</sub> capture, the cost estimates in Table 6 of the proposal preamble represent a plant that is somewhere between FOAK and NOAK, sometimes referred to as "next-of-a-kind," or "next commercial offering." These cost estimates for next commercial offerings do not include the unique cost premiums associated with FOAK plants that must demonstrate emerging technologies and iteratively improve upon initial plant designs. However, these costs do utilize currently available cost bases for emerging technologies with associated process contingencies applied at the appropriate subsystem levels.

The predicted costs for deployment of CCS can vary depending on a variety of reasons. We do not know the assumptions that went into Mr. Friedmann's estimated costs. However, we note in the proposed standards of performance that deployment of "partial CCS" – rather than "full CCS" (i.e., at capture levels of 90 percent or greater) – can be done at a much lower cost. In Table 6 of the proposed standards, we provided cost estimates for new generating technologies meeting the proposed emission limit. The increased cost ranged from 12 – 20 percent. Those costs can be further lowered when the new plant is able to sell the captured CO<sub>2</sub> for use in enhanced oil recovery (EOR) operations.

Because the proposed new source carbon pollution standards are in line with current industry investment patterns, they would not have notable costs and are not projected to impact electricity prices or reliability. The incremental prices cited by DOE may be applicable to a specific plant relative to another specific plant. However, one hypothetical plant does not significantly change retail prices paid by consumers, which are derived based on the cost of generation and transmission across the power system.

**Question 37:** In the proposed New Source Performance Standard rule for new electricity plants, EPA states that the standard it set for a new natural gas combined cycle power plant (1,000 pounds of CO<sub>2</sub> per megawatt hour) is being met by over 90% of those types of plants in operation today. How many coal fired power plants in operation today can meet the proposed standard (1,100 pounds of CO<sub>2</sub> per megawatt hour) for new coal power plants?



**Answer:** There are no coal-fired facilities operating today that are required to meet a standard of 1,100 lb/MWh. However, both the Boundary Dam plant and the Kemper IGCC plant are both in advanced stages of construction and are both designed to emit CO<sub>2</sub> at levels significantly lower than 1,100 lb CO<sub>2</sub>/MWh proposed standard.

**Question 38:** In previous EPA testimony, the Agency says the proposed standards for a new coal power plant "reflect the demonstrated performance of efficient, low carbon technologies that are currently being used today."

- a. Are there any full-scale coal power plants currently operating in the US that are using fully integrated CCS technology?
- b. Are there any electricity generating plants using CCS components in a FULLY INTEGRATED system (not gasification or EOR systems)?
- c. If not, how can EPA select a standard without knowing whether it is achievable in practice?

**Answer:** EPA's proposed standards rely on a wide range of data, information, and experience well beyond that generated by particular projects. The EPA has determined that CCS is technically feasible for new coal-fired power plants because all of the major components of CCS – the capture, the transport, and the injection and storage – have been demonstrated and are currently in use at commercial scale.

#### **Topic: Social Cost of Carbon**

**Question 39:** How many EPA full-time equivalent (FTE) hours were dedicated to the Interagency Working Group that developed the 2013 social cost of carbon estimates?

**Answer:** EPA employs staff with expertise in science and economics who work on issues related to climate change and contribute to the development of good science and sound policy. In that capacity, EPA staff from the Office of Policy (OP) and Office of Air and Radiation (OAR) provided technical expertise to the broader SCC workgroup as needed. The nature of such work and interactions with EPA's broader climate portfolio does not allow for Agency resource estimates at the fine resolution level requested.

**Question 40:** How much (in dollar amount) of EPA's FY 2014 appropriations were dedicated to the Interagency Working Group's 2013 social cost of carbon estimates, including the Office of Air and Radiation's Office of Atmospheric Program's "technical work and the modeling" for the estimates?

**Answer:** EPA's contributions to the 2013 SCC estimates were funded through the budget allocations to OP and OAR, specifically through salaries that covered staff time. As noted above, the nature of such work and interactions with other projects does not allow for precise Agency resource estimates at the fine resolution level requested.

**Question 41:** Do you believe it is appropriate for the EPA to enter into formal consultation with USFWS to assess impacts on threatened and endangered species from major regulations under the Clean Air Act? As you are aware, EPA consults with the USFWS under the 316(b) cooling water intake rule, so why not allow such consultation for greenhouse gas regulations that could have land use impacts with far greater consequence?

- a. Do you disagree with the Director Ashe of US Fish and Wildlife Service, who said you are obligated to consult with USFWS?
- b. What arguments have you given to Director Ashe as to why you are not obligated to do so?

**Answer:** The EPA's proposed new source performance standards for emissions of greenhouse gases from new fossil fuel-fired power plants was published in the *Federal Register* on January 8, 2014, and the comment period closed May 9, 2014. Any final rule the agency issues will be science-based, be legally sound, and clearly explain the agency's compliance with the Endangered Species Act while also addressing any comments we receive on that issue.

#### **Topic: EPA's TSCA Budget**

**Question 42:** The President's FY 2015 Budget justification indicates that the Agency will realign \$23 million to focus on several priorities, including implementation of the President's Executive Order on Chemical Safety (E.O. 13650). In a reference to the realignment of funds to address air toxics work, EPA stated the following:

In the agency's chemical safety program, realignments will be used to develop and release 19 draft chemical risk assessments and complete 10 final chemical risk assessments. These actions are critical in achieving the agency's long-term chemical safety goals.

Are the chemical risk assessments referred to in the Budget proposal the same assessments yet to be completed under the Work Plan Chemical program?

**Answer:** Yes, the 29 chemicals referenced in the question are associated with the TSCA Work Plan chemicals.

**Question 43:** I believe EPA has completed five draft chemical assessments under the Work Plan Chemical program to date.

- a: When will the first five assessments be made final?

**Answer a:** EPA anticipates making the final risk assessments available this calendar year.



**b:** Do you agree that the Work Plan assessments are a possible model for the Agency's work under a reformed Toxic Substances Control Act?

**Answer b:** The development of risk and other assessments for TSCA Work Plan Chemicals is consistent with the administration's principles to update and strengthen TSCA. These include that chemicals should be assessed against a risk based safety standard and that EPA should have authority to set priorities for conducting safety reviews on existing chemicals based on relevant risk and exposure considerations.

**c:** The Agency reviewed some 1,200 chemicals in prioritizing 83 substances for the Work Plan Chemicals program. Is it your opinion that the Agency has the expertise and capability to prioritize substances in commerce, for further review and assessment, relatively quickly and efficiently?

**Answer c:** Prioritization for the Work Plan chemicals process focused on identifying chemicals which are a high priority for risk assessment. The TSCA Work Plan chemicals were identified following a screening process that was developed after consultation with stakeholders on the criteria and data sources to be used for identifying chemicals for assessment. However, many chemicals could not be screened because useful hazard and/or exposure information on them is lacking.

**d:** The Work Plan Chemical assessments are intended to identify where additional regulation might be necessary with respect to a particular substance. In the first five draft Work Plan chemical assessments, have any additional regulatory needs been identified?

**e:** How does the Agency intend to address those identified needs – what regulatory measures will the Agency take on those substances?

**Answer d and e:** Regulatory actions are based on two distinct elements: risk assessment and risk management. The first five TSCA Work Plan Chemical assessments are risk assessments intended to identify whether there are risks associated with chemical(s) for specific exposure scenarios. A risk assessment does not encompass risk management actions such as regulatory development; rather, its purpose is to inform risk managers about what risk management actions, regulatory or otherwise, may be needed.

The EPA is currently assessing public and peer review comments on the initial draft risk assessments released in FY 2013. EPA will consider the findings contained in those final risk assessments as well as other inputs to determine if risk reduction activities are needed to address potential concerns. This could involve regulatory options, non-regulatory options, or a combination. Again, as noted in the first response, EPA anticipates making the final risk assessments and response to comments documents available this calendar year.

**Question 44:** The FY 2015 Budget proposal includes funding for implementing EPA's various chemical and pesticide safety programs under a broad category called "Ensuring the Safety of Chemicals and Preventing Pollution Prevention." The Agency proposes an increase of \$42.5 million for that category for FY 2015, with \$40.3 million of that increase targeted at chemical safety programs. I'd like to have a better understanding of what that \$40 million increase will be used for.

**a:** Under the FY 14 budget, the Agency's TSCA program was budgeted at \$62.7 million, split between \$48 million for existing chemicals management and \$14 million for new chemicals. So the FY 15 budget suggests no increase for management of the Toxic Substances Control Act over FY 2014. Is that correct?

**Answer a:** No. The FY 2015 President's Budget proposes \$62.7 million for the Chemical Risk Review and Reduction (CRRR) Program, under which the majority of TSCA implementation work is funded. This is an increase of \$4.1 million over the FY 2014 Enacted Operating Plan levels of \$58.6 million. The \$62.7 million request is split between \$17.1 million for New Chemicals and \$45.6 million for Existing Chemicals.

**b:** Since the \$40 million increase is not going to TSCA implementation, what will the funding increase support?

**Answer b:** The proposed \$42.5 million increase is for the entirety of Goal 4, "Ensuring the Safety of Chemicals and Preventing Prevention," which encompasses many programs across the Agency, including chemical and pesticide safety, children's health, research and development, and homeland security. Within the \$42.5 million, \$4.1 million is for the Chemical Risk Review and Reduction Program, details for which are provided in the response to the prior question.

**c:** The FY 14 Budget justification indicated that implementation of all of the Agency's existing TSCA authorities were a priority objective. Do you agree that TSCA implementation continues to be a priority for EPA?

**Answer c:** Yes, EPA continues to consider chemical safety one of the Administrator's top priorities and one of her seven themes (Taking Action on Toxics and Chemical Safety). TSCA implementation is, in particular, a key priority and EPA strives to carry out all of its responsibilities under TSCA within the limits of existing statutory authority and available resources.

**d:** Can you outline for me what the Agency accomplished in FY 14 in fully implementing its existing TSCA authority?

**Answer d:** FY 2013 accomplishments are highlighted in the FY 2013 Annual Performance Report, which is included in the FY 2015 President's Budget as an appendix. The FY 2014 Annual Performance Report will be released as a part of the FY 2016 President's Budget in February 2015.



In 2014, EPA is

- Addressing TSCA Work Plan chemicals, conducting risk management activities (e.g. Significant New Use Rules), and developing the final formaldehyde rules.
- Reviewing, and, as appropriate, making regulatory decisions on new chemicals, typically around 1,000 a year.
- Finalizing e-reporting rules and guidance, including issuing final eTSCA rule in FY 2014.
- Expanding public access to chemical and health and safety data, including populating and expanding ChemView, a recently launched database that provides streamlined access to an array of TSCA chemical information.

**Question 45:** The FY15 Budget justification indicates that there are more than 22,000 CBI claims in health and safety studies as of 2010. Since that time, the Agency has been working to address those claims in the CBI Challenge Program, in which you challenged companies to review and address their claims.

**a:** Does EPA still contend there were 22,000 CBI claims in health and safety studies now?

**Answer a:** In 2010, the Agency identified a universe of 22,483 TSCA Section 4, 5, and 8 cases which may have claims for CBI for the chemical identity in the health and safety studies. Through the process of review, the Agency has determined that CBI claims had been made in all these cases, but in many instances, the submissions did not contain health and safety studies.

**b:** Since the Challenge program was begun, some 16,291 cases were reviewed. Is that correct?

**Answer b:** Yes, as of March 31, 2013. As reported in EPA's Annual Performance Report for FY 2013, as of September 30, 2013, 17,617 cases had been reviewed.

**c:** Of those 16,291 cases, 12,043 had no CBI at all. Is that correct?

**Answer c:** No. The 12,043 cases reviewed is a reference to the subset of the 17,617 cases reviewed through FY 2013 that are largely associated with TSCA section 5 filings, which while they did contain CBI, they did not include health and safety studies with chemical identity claimed as CBI.

**d:** Would you agree that EPA wrongly classified some CBI claims when in fact there were not CBI claims made? In other words, didn't the 22,000 figure erroneously cite the number of CBI claims made with respect to health and safety studies?

**Answer d:** No. As explained above, the figure 22,000 (more precisely, 22,483) represents the total number of CBI cases included in the universe of cases initially identified for review. The Agency originally identified these cases as potentially containing CBI claims



for the chemical identity in the health and safety studies. Through the review process for the 17,617 cases to date, EPA determined that all those cases did contain CBI claims. However, in many of those cases, the claims were not for the chemical identity in the health and safety studies.

**e:** What was the cause of this significant error?

**Answer e:** To date, all of the cases reviewed contain CBI claims. The older tracking systems from the late 1970s flagged the presence of CBI claims but did not differentiate data types. For this reason, the Agency has stated, on its website and other public forums, that the cases "may have" CBI claims specifically linked to chemical identity and health and safety studies. These cases were not erroneously classified.

**f:** Would you agree that the perception that industry made excessive CBI claims is in error, and not borne out by the facts?

**Answer f:** All of the 17,617 cases reviewed through FY 2013 did contain CBI claims.

**g:** I understand that of the roughly 10,000 cases that in fact had CBI claims, some 3,349 were allowed, 909 have been declassified, and about 7,200 remain to be reviewed. Is that correct?

**Answer g:** The total number of filings to be reviewed for FY14 is 4,866. The 7,200 number referred to is from March, 2013. By the end of the fiscal year, EPA had increased its reviews to a total of 3,003, bringing the total number of to be initiated reviews down to 4,866 for FY14.

Regarding the 3,003 reviewed filings, in most instances, the filings did not meet the Agency criteria for declassification because the confidential business information (CBI) claims related:

- (1) to filings on chemicals or mixtures not actually in commerce, because of chemical identity issues, it was impossible to ascertain inventory status or were filings on non-TSCA uses,
- (2) the claims did not relate to health and safety data elements, or
- (3) the CBI claims for chemical name were valid under the implementing regulations.

The Agency was able to secure the declassification of 316 filings in FY13.

**h:** Would you consider the CBI Challenge program a success? What is the Agency doing to make clear that there was a significant error in the number of reported CBI claims, and to more closely track the actual number of claims made?

**Answer h:** As explained above, there was no significant error in the number of reported CBI claims. Yes, we would consider the program a success for several reasons. First, the program

is directly responsible for the release and public posting, to date, of 1,000 health and safety studies, previously not publicly available, on chemicals. These are largely voluntary declassifications by industry. Second, the program is responsible as well for the posting to the public portion of the TSCA Inventory of the identities of more than 600 chemicals previously treated as confidential. Third, the program has enabled more effective outreach to the regulated community clarifying the statutorily prescribed rules on what can and what cannot be claimed as confidential. The resulting dialogue has resulted in savings for both industry and the Agency.

**Topic: Hydraulic Fracturing**

**Question 46:** I am very concerned that the hydraulic fracturing study that EPA has been working on for over four years has gone beyond Congressional intent and has inappropriately expanded in scope. The request to EPA in the FY 2010 appropriations report was for EPA to study any link between hydraulic fracturing and drinking water. Yet four years later, despite serious concerns about how EPA is conducting this study, I understand the agency is now embarking on several new research areas and may have 30 or more separate reports steaming from this study. The agency seems to be studying every water issue related to oil and gas development.

**a:** What justification does the Agency have for going well beyond the Congressionally mandated scope?

**Answer a:** The scope of the EPA's *Study of the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources* is responsive to Congress' original request and was supported by the agency's Science Advisory Board in their review of the draft Study Plan in 2011. There has been no expansion of the scope beyond the original appropriations language.

**b:** What is the current timeline to issue the study?

**Answer b:** The *Study of the Potential Impacts of Hydraulic Fracturing for Oil and Gas on Drinking Water Resources* is national in scope and very complex. The careful and intensive review and synthesis of literature, research results, and stakeholder input, along with the recently intensified state outreach effort, will ensure that EPA's draft science assessment is as robust and complete as possible. We expect to release the draft assessment report for public comment and peer review by early 2015. The EPA then expects to provide a final report that is responsive to comments received from the public and the peer review.

**c:** What are current total EPA costs to date of this study?

**d:** What do you expect to be the total costs of the study once it is completed?



**Answer c and d:** Below is a table of funding for the study for each fiscal year:

| FY 2010<br>Enacted | FY 2011<br>Enacted | FY 2012<br>Enacted | FY 2013<br>Enacted | FY 2014<br>Enacted | FY 2015<br>Pres Bud |
|--------------------|--------------------|--------------------|--------------------|--------------------|---------------------|
| \$1.9M             | \$4.3M             | \$6.1M             | \$6.1M             | \$6.1M             | \$6.1M              |

Please see table above. The current costs of the study through FY 2015 total \$30.6 million. EPA has not yet developed its FY 2016 budget request.

**e:** What is the status of EPA's prospective case studies?

**Answer e:** We have worked closely with industry partners to try to identify suitable locations for prospective case studies that meet the scientific needs of the study and industry's business needs. Unfortunately, so far, we have not identified a suitable location. For a location to be suitable, it is necessary to gather a minimum of one year of characterization data for ground water and surface water prior to and following unconventional exploration activities in the study area, and for there to be no other hydraulic fracturing activities on adjacent properties, currently or potentially leased, during the entire study period, which could last several years.

**Question 47:** I am also concerned that this study will be released publicly before there is a peer review by the Science Advisory Board. It is my understanding that EPA plans to release the study to the public at the same time it is submitted for peer review, which is unacceptable and similar to the Agency's actions in their less than credible Pavillion, Wyoming investigation.

**a.** Isn't this poor process setting the Agency up again for a situation in which EPA may have to back track on findings after the initial draft is peer reviewed?

**Answer a:** The EPA customarily makes a draft report available for comment at the same time it is submitted for peer review by the Science Advisory Board (SAB). With reference to Highly Influential Scientific Assessments, Section III(5) of OMB's *Final Information Quality Bulletin for Peer Review* states that: "Whenever feasible and appropriate, the agency shall make the draft scientific assessment available to the public for comment at the same time it is submitted for peer review (or during the peer review process)."

**b:** This type of timeline has been used successfully by the EPA to scare and mislead the public with draft findings which are later debunked or never peer reviewed at all. Isn't this sort of timetable and procedure contrary to the goals of releasing a credible study or one that meets HISA requirements?

**Answer b:** OMB's *Final Information Quality Bulletin for Peer Review* stresses the importance of public comments in shaping expert peer review deliberations; therefore, the EPA customarily makes a draft report available for comment at the same time it is submitted for peer review by the Science Advisory Board (SAB). Before sharing the draft assessment report with the SAB and the public, the findings from the individual research projects contained in the report will

have undergone both an internal peer review and independent, external peer review (with the exception of Confidential Business Information, whose release is restricted). Additionally, the data themselves will have undergone rigorous quality assurance checks prior to the external peer review.

- c:** Given the struggles of EPA's previous investigations into hydraulic fracturing and the Agencies severely damaged credibility in this arena, how are you planning on ensuring the scientific validity of this current study?

**Answer c:** Quality assurance is the procedure used to assure that valid data are generated and used in a study. The data being used in the study have undergone rigorous quality assurance procedures prior to their use in developing research reports and papers and prior to peer review of the reports or papers. Then, peer review ensures that the methodology for data analysis and conclusions drawn from the data are scientifically sound and well founded.

- d:** How is EPA planning on ensuring that any and all information disseminated to the public as a possible conclusion is properly vetted and peer reviewed if it is releasing conclusions prior to review by the SAB?

**Answer d:** See answers above. When an agency releases information for the purposes of peer review, it is not considered an official "dissemination" of information to the public. This is made clear by adding a disclaimer notifying the reader that the draft document is being distributed for pre-dissemination peer review and does not represent Agency policy.

**Question 48:** The Agency has indicated that they will not do a risk assessment to put all this information into some actual context.

- a.** Why does EPA refuse to conduct a risk assessment as part of the study?

**Answer a:** Consistent with the scope defined by Congress in its request, EPA's report will provide an assessment of the potential for hydraulic fracturing activities to change the quality or quantity of drinking water resources in the United States. This report will identify factors affecting the frequency and severity of impacts. EPA's report will represent a state of the science synthesis of information concerning the subject and will be national in scope. Consistent with the scope prescribed by Congress' request, we did not conduct site-specific or national predictive modeling to quantitatively estimate environmental concentrations of contaminants in drinking water resources. The report will not be a human health exposure assessment, will not identify populations at risk, nor estimate human health impacts.

- b:** Does the Agency plan on putting any of the study's findings or conclusions into context? If so, how?



**Answer b:** Yes. As a state of the science assessment, EPA's report will use information from the scientific literature and government reports, including peer-reviewed publications from research conducted under EPA's *Plan to Study the Potential Impacts of Hydraulic Fracturing on Drinking Water Resources*.<sup>1</sup> We are considering material submitted by the public, industry, and regional and state entities in response to EPA's requests for data and information through stakeholder workshops, roundtables, and Federal Register notice. We also have recently intensified our state outreach efforts as part of the study. These efforts will ensure that states understand the data sources we used and will provide them further opportunity to recommend additional sources of information. These robust and diverse information sources provide a solid scientific foundation and context for EPA's report.

**Question 49:** You've said that hydraulic fracturing can be done safely and have agreed with former EPA Administrator Lisa Jackson that there have been no confirmed cases of hydraulic fracturing impacting drinking water. What is your vision for getting the American public to understand that hydraulic fracturing is safe and that fracking has unlocked an American energy revolution that has lowered all Americans' energy prices, created jobs, helping lower GHG emissions and revitalizing such industries as the manufacturing, steel and chemical sectors?

**Answer:** EPA is committed to working with states and other stakeholders to understand and address potential concerns with hydraulic fracturing so the public has confidence that unconventional oil and gas production will proceed in a safe and responsible manner. In so doing, we will continue to follow a transparent, science-driven approach, with significant stakeholder involvement.

**Question 50:** The DOE and USGS have known experience conducting drilling and water sampling studies in the field. Specifically, DOE's NETL is doing a study in PA's Greene and Washington counties to assess the environmental effects of shale gas production and a July 2013 press release issued by NETL stated that "while nothing of concern has been found thus far, the results are far too preliminary to make any firm claims. We expect a final report on the results by the end of the calendar year."

**a:** Are you aware of this study?

**Answer a:** Yes, we are aware of this study.

**b:** Are you asking that DOE share this type of work and can you use this study in the larger EPA water study?

**Answer b:** EPA looks forward to receiving the reports for NETL's studies in Pennsylvania's Greene and Washington counties when they become final. As appropriate, we will use the results of NETL's study to inform the development of our study of the potential impacts of hydraulic fracturing for oil and gas on drinking water resources. Additionally, both DOE and

USGS are aware of EPA's ongoing study, our continued progress with that study, and our willingness to consider any relevant papers, reports, or materials that may inform the development of our study.

- c:** Specifically, would the EPA benefit from the DOE's and USGS's expertise in these issues as part of the EPA's larger water study which continues to drag along and clearly demonstrates that the EPA's taken on more than it can chew?

**Answer c:** EPA has been and will continue to engage with our interagency partners in DOE and USGS to improve understanding of the potential impacts of developing our Nation's unconventional oil and gas resources so the public has confidence that unconventional oil and gas production will proceed in a safe and responsible manner. We are exchanging information regarding each agency's research related to hydraulic fracturing and drinking water resources. We appreciate the continuing input of DOE and USGS to help inform our assessment as we all work to capture the state of the science concerning hydraulic fracturing and drinking water resources in the United States. The careful and intensive review and synthesis of literature, research results, and stakeholder input, along with the recently intensified state outreach effort, will ensure that EPA's draft science assessment is as robust and complete as possible.

**Question 51:** Last June, ORO announced it would abandon its flawed drinking water investigation in Pavillion, WY and would instead support a further investigation by the State of Wyoming.

- a:** Given the flawed science on display by the agency at Pavillion and ORO's withdrawal, will you exclude the agency's work and data prior to June 2013 from the agency's Congressionally-requested study on the relationship between hydraulic fracturing and drinking water? If not, why not?

**Answer a:** The EPA does not plan to finalize or seek peer review of its draft Pavillion groundwater report released in December 2011 nor does the agency plan to rely upon the conclusions in the draft report.

- b:** ORD abandoned its investigation, yet according to agency statements, continues to "stand behind its work and data." How can the agency reconcile these directly contradictory actions? How would you explain to the American people that continuing a flawed investigation is not worth taxpayer resources, yet the agency "stands behind" the work and data that it abandoned?

**Answer b:** As you may be aware from our statement at the time of the State of Wyoming's announcement on June 20, 2013, we believe that EPA's focus should be on using our resources to support Wyoming's efforts, which will build on EPA's monitoring results. In light of the State's commitment to further investigation and efforts to provide clean water to Pavillion residents, EPA does not plan to finalize nor seek peer review of its draft report.



Wyoming's continuing investigation seeks to address water quality concerns and will consider sampling data obtained through the EPA's groundwater investigation. Wyoming held a public meeting on June 12, 2014, to report on the status of the progress of the investigations and reports and to introduce the independent expert selected for the domestic well investigation. The state sought EPA and stakeholder input on the selection of the independent expert who will provide advice to the state in the completion of their investigation and reports. Michael Acton of Acton Mickelson Environmental Consultants was selected by the State and introduced at the June 12 meeting as the independent expert for the domestic well study. At the June 12 meeting, the state indicated that it has installed the domestic water loadout facility at the Town of Pavillion, formed a water delivery association, installed 18 cisterns for 16 landowners and expects to install another 13 cisterns for 12 landowners by late fall. Also, at the June 12 meeting, the state indicated that it expects to deliver the draft final well bore integrity evaluation report to EPA and Encana mid-July to early August and anticipates delivery to EPA and Encana of the draft surface pits review report sometime between end of July to early August. On July 24, 2014, the state provided notice that the Well Bore Integrity draft report would be issued to the public at the same time this draft report is released to Encana and EPA. The state issued this Well Integrity Review report on August 5, 2014, and is requesting public comment by September 6, 2014.

**Question 52:** In February the EPA's IG sent a memo to the EPA Office of Water outlining an initiative the IG has underway that will "determine and evaluate what regulatory authority is available to the EPA and states, identify potential threats to water resources from hydraulic fracturing, and evaluate the EPA's and states' responses to them." Do you consider this a duplication of the EPA's efforts as it relates to the multi-year and multi-million dollar hydraulic fracturing and water study currently in process at the EPA and if not, then how do these studies differ? Hasn't EPA independently done this type of evaluation?

**Answer:** The OIG does not consider its evaluation in this case as duplicative of the study by the EPA's Office of Research and Development (ORD). ORD's Final Study Plan is scoped to the hydraulic fracturing water lifecycle, defined by ORD to include water acquisition, chemical mixing, injection, flowback and produced waters, and wastewater treatment. The OIG will not undertake a review of these matters. The OIG is not conducting independent scientific evaluations, laboratory studies or toxicological studies as planned in ORD's study.

**Topic: Water Connectivity Study:**

**Question 53:** EPA recently released a notice of proposed rulemaking that would constitute the greatest expansion of federal control over land and water resources in the 42-year history of the Clean Water Act (CWA). The "Kennedy test" in the *Rapanos* Supreme Court decision calls for the finding of a "significant nexus" between waters for the assertion of federal jurisdiction. The EPA Office of Water asked the Office of Research and Development to conduct a Connectivity Study to help inform the Agency's regulatory policy decisions. If EPA intended for the science to inform policy decisions, the regulatory process should not have been initiated until the

Connectivity Study was completed, along with a robust peer review of the study. That did not happen. In addition, the Connectivity Study is fundamentally flawed since there was no definitional finding of what constitutes a "significant" connection.

- a. Do you believe it is important that the "waters of the United States" regulation be based on sound science? If so, how can you justify moving forward with the expansion of the scope of "waters of the United States" before the Connectivity Study is completed and has undergone peer review?

**Answer:** We agree that it is essential for the Agency's regulatory promulgation to reflect the most current relevant science. In the case of the proposed rulemaking for the definition of "waters of the U.S." under the Clean Water Act (CWA), the EPA's Draft Connectivity Report ("Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence") provides a review and synthesis of over 1,000 pieces of published, peer-reviewed scientific literature regarding the effects that streams, wetlands, and open waters have on larger downstream waters such as rivers, lakes, estuaries, and oceans. The draft report does not reflect new information or new science. The draft report already has undergone both internal and independent external peer review, and is now being reviewed by the EPA's independent Science Advisory Board (SAB). The peer review report from the first peer review is available on the docket for the proposed rule, and the draft Connectivity Report reflects comments from that first peer review. The SAB published its draft peer review on April 1 and held public teleconferences to discuss the draft review on April 28 and May 2. The SAB expects to issue a final peer review report later in 2014. The EPA has committed that the rule will not be finalized until the SAB review and the final Connectivity Report are complete.

#### **Topic: Economic Impacts**

**Question 54:** In performing the cost-benefit analysis required for development of the proposed regulation, why did you choose to use the permitting numbers from 2010 as your baseline? As you know, due to the economic recession occurring at the time, there were scarcely any construction activities initiated during that year and the numbers were deflated. In addition, why did EPA only examine the cost impacts under Section 404 and not for other CWA programs?

**Answer:** At the time the economic analysis was developed, 2010 permit data was the most current information available. The cost estimate in the economic analysis was based on 2010 dollars, and all cost and benefit information was adjusted accordingly. The EPA analyzed the proposed rule's expected impact to each program under the Clean Water Act. The methodology and findings are documented in "Economic Analysis of Proposed Revised Definition of Waters of the United States," March 2014, which is in the docket for the proposed Waters of the U.S. rule. The agency invites comments on this document as part of the public comment period on the proposed rule and will update the analysis to support the final rule.



**Question 55:** The economic analysis completed by the agency predicts that only 2.7% more waters will be made federally jurisdictional by the proposed "Waters of the United States" rule. As you know, the analysis - including the 2.7% figure - has been severely criticized by credible economists and is likely to be underestimating the potential impact of the rule. Given the outstanding concerns with the analysis, can you explain why the agency did not wait to go forward with a proposed rule until the agency had addressed these concerns and produced a credible economic analysis to inform the public?

**Answer:** The economic analysis actually uses a figure of 3.2 percent for the additional waters that would be considered protected by the Clean Water Act (CWA). This figure reflects that a small percentage of non-adjacent "other waters" would be found to have a significant nexus and be subject to CWA jurisdiction under the proposed rule. The 2.7 percent number cited in this question came from the economic analysis for the 2011 draft guidance, which is now superseded by the economic analysis prepared for the proposed rule. We are committed to an inclusive, transparent, review and comment process, ensuring that all interested parties have ample opportunity for input and information for our consideration. The EPA and the U.S. Army Corps of Engineers (Corps) published the proposed rule for public comment on April 21, 2014, with a 91-day public comment period extending to July 21, 2014. That public notice included the agencies' economic analysis, which also is available for the first time for public review and comment. We will address these comments and questions and include them in the official docket, Docket Id. EPA-HQ-OW-2011-0880 at <http://www.regulations.gov>. The EPA and the Corps will carefully consider these comments in deciding what changes to make to the final rule.

**Question 56:** David Sunding, Ph.D., recently reviewed EPA's economic analysis associated with the proposed "Waters of the United States" rule and concluded that the errors and omissions in EPA's study are incredibly severe and may render it essentially meaningless. To address these issues, Dr. Sunding recommended that the agency withdraw the economic analysis and prepare an adequate study for this major change in the implementation of the CWA. Would you be willing to withdraw this flawed economic analysis and develop a new analysis addressing these concerns?

**Answer:** We are committed to an inclusive, transparent, review and comment process, ensuring that all interested parties have ample opportunity to submit information for our consideration. The EPA and the U.S. Army Corps of Engineers (Corps) published the proposed rule for public comment on April 21, 2014, with a 91-day public comment period extending to July 21, 2014. That public notice included the agencies' economic analysis, which also is available for the first time for public review and comment. Dr. Sunding has not yet shared his specific comments with the EPA nor the Corps, and has the opportunity to do so during the comment period. We will address these comments and questions and include them in the official docket, Docket Id. EPA-HQ-OW-2011-0880 at <http://www.regulations.gov>. The EPA and the Corps will carefully consider these comments in deciding what changes to make to the final rule and accompanying economic analysis.



**Question 57:** I understand that when assessing the potential economic costs and benefits of EPA's proposed "waters of the United States" rule, the agency omitted analysis of certain key programs that will undoubtedly be impacted by the rule. The agency provides no analysis for costs related to: the development of state water quality standards, monitoring and assessment of water quality, total maximum daily load development, and the entire industrial wastewater NPDES permitting program. In addition, EPA based its abbreviated assessment of impacts on the 311 spill program on "anecdotal" evidence. Can you explain why the EPA omitted or provided very little analysis of these key programs?

**Answer:** The EPA analyzed the impact to each program under the Clean Water Act. This information is documented in "Economic Analysis of Proposed Revised Definition of Waters of the United States," March 2014, which is in the docket for the proposed Waters of the U.S. rule.

**Question 58:** The EPA certified that this proposed rule will "not have a significant impact" on small businesses and communities. However, the agency did not gather significant feedback from those impacted prior to the rule being proposed. According to the U.S. Chamber of Commerce, it takes up to 12 months and costs hundreds of thousands of dollars to obtain a wetlands permit. Are you able to assure this committee that the costs and timelines associated with permit reviews will not be extended by this change in jurisdictional definition?

**Answer:** Under the Regulatory Flexibility Act (RFA), agencies certify whether or not the rule will have a "significant economic impact on a substantial number of small entities." The scope of regulatory jurisdiction in this proposed rule is narrower than under existing regulations. Because fewer waters will be subject to the CWA under the proposed rule than are subject to regulation under the existing regulations, this action will not affect small entities to a greater degree than the existing regulations. As a consequence, this action, if promulgated, will not have a significant economic impact on a substantial number of small entities.

In addition, the agencies sought early and wide input from small businesses while developing the proposed rule. On October 12, 2011, the EPA held an all-day meeting with representatives from small businesses, small government entities, and small nongovernmental organizations, to discuss their perspectives on CWA jurisdictional scope. Attendees also submitted written comments following the meeting. Between fall 2011 and fall 2012, EPA held a series of meetings with local and city governments, including small governments. Small entity input from meetings and written comments have helped inform the draft proposal.

**Question 59:** The cost benefit analysis supporting the "waters of the United States" proposal contains numerous deficiencies. According to the National Stone, Sand, and Gravel Association the increased mitigation costs for just one site can be \$100,000 or more under the new rule. With over 10,000 of these facilities in the U.S. and dozens of industries affected, the costs of this rule have been drastically underestimated. While these deficiencies have been pointed out to EPA and the Corps, the very low estimates are still repeated by EPA and Corps officials. Does the EPA have plans to revise the cost benefit study to address these legitimate concerns?

**Answer:** We are committed to an inclusive, transparent, review and comment process, ensuring that all interested parties have ample opportunity for input and information for our consideration. The EPA and the U.S. Army Corps of Engineers (Corps) published the proposed rule for public comment on April 21, 2014, with a 91-day public comment period extending to July 21, 2014. We will address these comments and questions and include them in the official docket, Docket Id. EPA-HQ-OW-2011-0880 at <http://www.regulations.gov>. The EPA and the Corps will carefully consider these comments in deciding what changes to make to the final rule and accompanying economic analysis.

**Question 60:** As you know, there are several new definitions and concepts contained in the proposed "Waters of the United States" rule. As a result, there is a distinct possibility that agencies will have to spend more money determining how to actually implement this rule. There also is a strong likelihood that other agencies' programs will be impacted given the broad scope of this proposed rule.

**a:** Has EPA consulted with other federal agencies that have administrative responsibilities under the Clean Water Act?

**Answer a:** Yes. The proposed rule was developed jointly with the U.S. Army Corps of Engineers, which is the principal regulator for the Section 404 program. The EPA also had discussions with other federal agencies during the interagency review process which ran from September 2013 through March 2014.

**b:** Has EPA considered the costs that the EPA and the Corps will incur, without considering other actors, in determining how this rule will be implemented?

**Answer b:** Yes. The economic analysis analyzes the proposed rule's expected impact to each program under the Clean Water Act, including the costs to the implementing agencies.

**c:** Does EPA know how other agencies will interpret this rule and whether other agencies will require additional resources in order to understand how their ability to administer their own programs might be affected?

**Answer c:** Yes. In accordance with Executive Order 12866, the proposed rule was subject to interagency review. The EPA and the Corps of Engineers had discussions with agencies on how the rule might affect their programs. However, these discussions did not identify a need for additional resources for these agencies.

#### **Topic: Clean Water Act Permitting**

**Question 61:** In light of EPA's recent actions concerning Pebble Mine and Spruce Mine, the regulated community is understandably concerned about the lack of certainty currently



surrounding the Section 404 permitting process. How does EPA intend to address these concerns and ensure that the regulated community can have their projects fairly considered and can rely on their permits once they are issued? Would you agree that finality is an important consideration for permits?

**Answer:** The EPA takes very seriously the authority provided to the agency by Congress, pursuant to Section 404(c) of the Clean Water Act (CWA), to determine whether discharges of dredged or fill material into a specified site in waters of the U.S. would result in an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

The EPA's careful use of this authority is indicated by the fact that the agency has completed just 13 Final Determinations since 1972 pursuant to CWA Section 404(c). To put this in perspective, over the same period of time, the Corps of Engineers is estimated to have authorized more than two million activities in waters of the U.S. under the CWA Section 404 regulatory program.

As these numbers demonstrate, the EPA has worked successfully with the Corps and permit applicants to resolve concerns without exercising its Section 404(c) authority in all but a miniscule fraction of cases.

**Question 62:** According to EPA, the agency initiated the Bristol Bay Watershed Assessment in response to a petition for EPA to exercise its CWA Section 404(c) authority. Has the agency received any other similar petitions, and if so, what has been requested? Has the agency received any petitions concerning the agency's use of Section 404(c) on any existing permits?

**Answer:** No, to both questions.

**Question 63:** Does EPA have any plans to potentially perform studies on or initiate the 404(c) process on any other waters at this time? If so, where?

**Answer:** No.

**Question 64:** Does EPA have any plans to potentially reevaluate any existing Section 404 permits pursuant to its claimed Section 404(c) authority? If so, which ones?

**Answer:** No, the agency does not have any such plans.

**Question 65:** Has the EPA evaluated the consequence of its actions with respect to Bristol Bay and Spruce Mine and the impact the uncertainty will have on investment in natural resource development?



**Answer:** The restrained and judicious use of EPA's Section 404(c) authority has provided the business community with a high level of investment certainty while also ensuring protection of the nation's most valuable and vulnerable water resources.

**Question 66:** Could regulatory uncertainty over Section 404 permits drive away investment at the cost of American jobs? Has the EPA studied this issue?

**Answer:** The EPA takes very seriously the authority provided to the agency by Congress, pursuant to Section 404(c) of the Clean Water Act (CWA), to determine whether discharges of dredged or fill material into a specified site in waters of the U.S. would result in an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas.

The EPA's careful use of this authority is indicated by the fact that the agency has completed just 13 Final Determinations since 1972 pursuant to CWA Section 404(c). To put this in perspective, over the same period of time, the Corps of Engineers is estimated to have authorized more than two million activities in waters of the U.S. under the CWA Section 404 regulatory program.

As these numbers demonstrate, the EPA has worked successfully with the Corps and permit applicants to resolve concerns without exercising its Section 404(c) authority in all but a miniscule fraction of cases. Given the very few instances where the EPA has invoked its Section 404(c) authority, the EPA has not studied the effect of using this authority on investment or jobs.

**Question 67:** Many states have primacy over their Surface Mining Control and Reclamation Act (SMCRA) permitting programs, and as such, many states expend a great deal of time and resources in the mine permitting process. What effect would a lack of finality in CWA Section 404 permits have on state SMCRA permitting scheme?

**Answer:** The EPA has taken final action pursuant to its Clean Water Act (CWA) Section 404(c) authority with respect to a surface coal mining project only once (in 2011) in the more than 40-year history of the CWA. As such, the EPA does not believe that the agency's single and judicious use of its authority has meaningfully disrupted other agencies' authorities under the Surface Mining Control and Reclamation Act (SMCRA). It also is important to note that SMCRA and the CWA are separate statutes, each with independent authorities and responsibilities.

**Question 68:** The President, in executive orders and public statements, has said that streamlining the permitting process for energy projects - particularly those necessary to support renewable energy projects - is a high priority for his Administration. As you know, individual permits, by definition, take longer to get approved. Due to the proposed rulemaking, it's likely that more individual federal permits will be required, especially for energy projects. Where a federal permit is required, other federal requirements also are imposed (NEPA, potential ESA

consultations, historic preservation review, tribal consultations, and citizen suit enforcement), thus lengthening the processing time. Can you explain how this outcome is consistent with the President's streamlining objective?

**Answer:** The proposed rule does not alter the Clean Water Act Section 404 permitting process administered by the U.S. Army Corps of Engineers and two authorized states. The proposed rule does not alter the Corps' existing nationwide permits (NWP) that currently streamline the permitting process for many energy projects, such as NWPs 8, 12, 17, 44, 51, and 52. The proposed rule may require additional permits than under current practice, but will expedite the permit review process in the long-term by clarifying jurisdictional matters that have been time-consuming and cumbersome for field staff and the regulated community for certain waters in light of the 2001 and 2006 Supreme Court cases.

**Question 69:** While the Administration has committed to streamlining and expediting permitting for major infrastructure projects that advance energy (e.g., Executive Order 13604, Blueprint for a Secure Energy Future), there is some concern that this proposed rulemaking will have the opposite effect. This is because EPA's proposed rule creates new sub-categories of water that could be subject to federal jurisdiction, preempts states' rights to regulate internal waters traditionally regulated only by the states, and creates a cumbersome review process for determining which waters are jurisdictional under the new definition of "Waters of the United States."

**a:** Can EPA guarantee that this rule will not further delay permitting for energy infrastructure projects?

**Answer a:** The proposed rule does not alter the Clean Water Act Section 404 permitting process administered by the U.S. Army Corps of Engineers and two authorized states. The proposed rule does not alter the Corps' existing nationwide permits (NWP) that currently streamline the permitting process for many energy projects, such as NWPs 8, 12, 17, 44, 51, and 52. In general, the agencies believe that the proposed rule will expedite the permit review process in the long-term by clarifying jurisdictional matters that have been time-consuming and cumbersome for field staff and the regulated community for certain waters in light of the 2001 and 2006 Supreme Court cases.

**b:** Has EPA and the Army Corps considered the Administration's goals for energy development and infrastructure expansion in formulating this rule? If so, is that consideration discussed in the rule or elsewhere? Have the agencies requested comments on how this rule might impede the development of energy projects?

**Answer b:** The proposed rule does not alter the Clean Water Act Section 404 permitting process administered by the U.S. Army Corps of Engineers and two authorized states, or the Section 402 permitting process administered by 46 states and the EPA. For this reason, the



agencies did not explicitly consider the Administration's goals for energy development and infrastructure expansion in formulating the proposed rule.

The EPA and the Army Corps welcome comments on their proposed rule on this and other issues. We are committed to an inclusive, transparent, review and comment process, ensuring that all interested parties have ample opportunity for input and information for our consideration. The EPA and the U.S. Army Corps of Engineers (Corps) published the proposed rule for public comment on April 21, 2014, and comments may be submitted via the official docket, Docket Id. EPA-HQ-OW-2011-0880 at <http://www.regulations.gov>. The original comment period ended on July 21, but on June 10, the agencies notified stakeholders that the public comment period was being extended to October 20, 2014. The EPA and the Corps will carefully consider comments in deciding what changes to make to the final rule.

- c: In the cost benefits analysis for this rule, do the agencies consider any of the potential negative impacts that this rule could have on energy sector development such as: new delays in permitting projects, more cumbersome consultations between state and federal agencies, and more permits needed for the same projects?

**Answer c:** Because the proposed rule does not change the Clean Water Act Sections 402 and 404 use of general permits, the EPA found that the proposed rule would not have a significant adverse effect on the supply, distribution, or use of energy. This statement is found in the preamble to the proposed rule in section IV.H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

**Topic: Fill Material:**

**Question 70:** The current definition of fill material, finalized in May 2002, solidified decades of regulatory practice by unifying the Corps and EPA's prior conflicting definitions so as to be consistent with each other and the structure of the CWA. However, both EPA and the Corps have stated that they are considering revising the definition of fill material. These changes could mean that certain mining-related activities would be deemed illegal, thereby preventing mining companies from operating. The FY 2014 Omnibus appropriations bill included language to prevent the Corps from working on any regulation that would change the definition of fill material.

- a. Has EPA engaged in discussions with the Corps on revising the rule?

**Answer a:** During past years, the Corps and the EPA have discussed actions for the definition of "fill material" that could provide additional clarity. However, the EPA has no active discussions with the Corps in FY 2014 on revising the agencies' definition of "fill material."

- b: What is EPA's rationale for potentially revisiting the well-established division of the Sections 402 and 404 programs?

**Answer b:** The EPA has no active discussions with the Corps in FY 2014 on revising the agencies' definition of "fill material."

c. What specific problems is EPA seeking to address by revisiting the definition of fill material, and how exactly is EPA intending to address them?

**Answer c:** The EPA has no active discussions with the Corps in FY 2014 on revising the agencies' definition of "fill material."

### Topic: Chemicals

**Question 71:** In the EPA's proposed FY 2015 budget, the agency is requesting \$23 million in FY 2015 to support activities under the President's Executive Order on chemical safety, as well as Agency efforts on chemical prioritization, air toxics, radon, and volatile organic compounds in drinking water.

a: Can you provide more specific information on the projects this funding will go towards?

b: Do you agree that we need to improve the Local Emergency Planning Committee (LEPC) program and Emergency Planning & Community Right-To-Know Act (EPCRA) reporting system?

c: Will this funding go towards the development of new technology such as a mobile app version of the CAMEO system and the development of a web-based version of EPCRA Tier II submission to facilitate a more accurate and complete hazardous materials reporting system? Such improvements will allow local first responders to prioritize the hazards they may face at the facility.

**Answer:** Slightly more than half of the resources, \$11.5 million and 11.5 FTE, will support activities under Executive Order 13650 on Improving Chemical Facility Safety and Security. Specifically, these funds will be used to:

- (1) Provide technical assistance and guidance to State Emergency Response Commissions (SERCs) and Local Emergency Planning Committees (LEPCs) in order to improve communications, risk analysis capabilities, and local emergency planning. This will include developing a new pilot grant program to assist local communities, planners, and responders with developing and implementing local emergency contingency plans;
- (2) Conduct additional outreach and technical assistance with chemical facilities to improve safety and security and to reduce risk of hazardous chemicals to workers and communities. This will include revising the RMP rule in line with recommendations from industry and other stakeholders and developing guidance, advisories, and alerts;
- (3) Enhance the Computer-Aided Management of Emergency Operations (CAMEO)



system to include development of a web-based suite for states and a viewer for mobile devices, which would provide easy accessibility for SERCs and LEPCs as well as develop a web-based version of EPCRA Tier II submission to facilitate a more accurate and complete hazardous materials reporting system.

- (4) Additionally, EPA will work with our Federal partners to identify technical assistance opportunities to improve State and local emergency plans and training; expand training opportunities for federal and state RMP/EPCRA partners; and establish a mechanism for data sharing with other Federal agencies.

Of the remaining resources requested:

- \$5 million and 5.0 FTE will provide additional support to enhance the analytical capabilities required to develop regulations, to continue to progress in developing the National Air Toxics Assessment (NATA), to update methods for estimating area and mobile source emissions, and to update air dispersion modeling based on recent advances in the science.
- \$3 million will accelerate EPA's expansion of the risk-based prioritization effort for application to TSCA chemicals, across toxicological endpoints and exposure scenarios beyond those used with endocrine disruptors. Specifically, these funds would be used to: (1) model and generate exposure data; (2) evaluate background exposure levels and biological relevance of environmental exposures; and (3) translate for fit-for-purpose risk-based prioritization.
- \$2.5 million and 4.0 FTE will advance the agency's efforts to achieve the goal of releasing 19 draft chemical risk assessments for public comment and peer review and complete 10 final risk assessments (cumulatively) by the end of FY 2015. These accomplishments also will support the agency's longer-range strategic planning commitment to address all currently identified TSCA Work Plan Chemicals by FY 2018.
- \$1 million and 2.0 FTE will support increased focus on regulating groups of drinking water contaminants, such as volatile organic compounds (VOCs), resulting in effectively addressing potential collective risks of contaminants generally recognized to be present together and demonstrating a predictable strategy for regulating similar contaminants and/or groups in the future.
- \$500 thousand and 1.5 FTE will be used to update radon risk assessment and cost-benefit analyses and begin work to improve radon data management.

**Question 72:** In the case of the West Texas fertilizer facility tragedy that occurred on April 17, 2013, it appears that the facility was not compliant with a number of existing regulations and industry standards. Do you agree that had existing regulatory requirements and industry standards been fully implemented by West Fertilizer this tragic accident would not have happened?

**Answer:** EPA has not determined whether the facilities in West, Texas were compliant with all existing federal and state rules and regulations because investigations into the incident, including an investigation by the U.S. Chemical Safety Board (CSB), remain ongoing.

**Question 73:** Do you agree that we need to improve the Local Emergency Planning Commission (LEPCs) program and Emergency Planning & Community Right-To-Know Act (EPCRA) reporting system?

- a. What would EPA recommend to improve and enhance education / training / emergency response efforts between chemical facilities and their local LEPC and first responders?

**Answers a:** EPA is participating with other Federal agencies on a Working Group established by the Presidential Executive Order on *Improving Chemical Facility Safety and Security* (EO 13650) to enhance coordination across all levels of state and local government and enhance outreach and information sharing with the chemical industry, emergency managers, first responders, and other stakeholders.

One of the five key areas addressed under EO 13650, is strengthening community planning and preparedness. The EPA is working to improve LEPC programs by developing guidance materials and on-line training to explain roles, responsibilities and authorities under EPCRA to implement local emergency planning. EPA plans to enhance the Computer-Aided Management of Emergency Operations (CAMEO) system by added web-based applications for mobile devices to improve accessibility to LEPCs and State Emergency Response Commissions (SERCs). EPA also plans to develop a web-based version of EPCRA's Tier II Submit electronic reporting system to support state development of internet reporting tools. The Working Group's status report to the President released on June 6, provides detailed information on Working Group priority actions and sets the path forward for continued implementation and sustained coordination and collaboration to improve the safety and security of chemical facilities. A description of Working Group priority actions can be found at: [https://www.osha.gov/chemicalexecutiveorder/EO\\_Fact\\_Sheet\\_060514.pdf](https://www.osha.gov/chemicalexecutiveorder/EO_Fact_Sheet_060514.pdf).

- b. Do you agree that the main issue related to the West Fertilizer tragedy was a storage issue, not an air release issue?

**Answer b:** The Chemical Safety Board (CSB) is still investigating the root causes and contributing factors associated with the West Fertilizer tragedy. We will not prejudge the outcome of the investigation as to the "main issue" at West Fertilizer. However, improper storage is an accidental release prevention issue under CAA 112(r). For example, EPA RMP rules are required to "cover storage, as well as operations" pursuant to CAA 112(r)(7)(B)(i). Proper storage practices can prevent accidental releases.

**Question 74:** The EPA Risk Management Program (RMP) was authorized by Congress in the "Clean Air Act Amendments of 1990" following the Bhopal, India accident in 1984. In previous EPA testimony before Congress, the agency stated that the "goal of the EPA's Risk Management Program is to prevent accidental releases of substances to the air that can cause



serious harm to the public and the environment from short-term exposures, and to mitigate the severity of releases that do occur."

- a. Is this still the goal of the agency?
- b. How does EPA define short-term exposure?
- c. Is this consistent with past EPA interpretations?
- d. Do you agree there are statutory factors the agency needs to consider when adding any hazardous substances to the RMP list? If yes, could you list the factors EPA is required to consider?
- e. Would you agree that a product such as solid fertilizer grade ammonium nitrate was never intended to be part of the EPA RMP program as the focus of the program is to address accidental toxic releases into the air from a hazardous gas or liquid?

**Answer:** The EPA's Chemical Emergency Preparedness and Prevention Program has responsibility for the national regulatory framework to prevent, prepare for and respond to catastrophic accidental chemical releases at industrial facilities throughout the United States. The goal of the Risk Management Program is to prevent major chemical accidents from causing disasters by establishing a prevention and response program.

For the chemicals currently listed under our rules for the RMP, EPA defines short term exposure in the following ways:

- Toxic chemicals - EPA based its listing decisions on the median lethal airborne concentration or dose of each substance, along with the chemical's volatility. The time frame for lethal effects varies by chemical, but is generally measured as a period of minutes, hours, or days.
- Flammable chemicals - EPA based its listing decisions on the potential for the substance, if released, to form a vapor cloud, explode, and immediately cause serious injuries or damage offsite.

In adding substances to the RMP list, the Clean Air Act requires EPA to consider the following criteria: 1) the severity of any acute adverse health effects associated with accidental releases of the substances; 2) the likelihood of accidental releases of the substances; and 3) the potential magnitude of human exposure to accidental releases of the substances (CAA 112(r)(4)).

EPA does not agree that the inclusion of substances on the RMP list is limited to only hazardous gases or liquids. As provided for under Clean Air Act Section 112(r), the focus of RMP is on substances that pose the greatest risk of causing death, injury, or serious adverse effect on human health or the environment from accidental releases.

**Question 75:** The U.S. chemical industry is one of the most regulated industries in the world and data shows that the industry is one of the safest. This is due to an existing set of safety and security laws, regulations and voluntary programs. Do you agree that EPA should focus its time and resources on increasing training, outreach and education efforts to the

regulated community in order to help with compliance assistance and focus enforcement on companies with a history of noncompliance?

**Answer:** EPA is participating with other Federal agencies on a Working Group established by the Presidential Executive Order on *Improving Chemical Facility Safety and Security* (EO 13650) to enhance coordination across all levels of state and local government and enhance outreach and information sharing with the chemical industry, emergency managers, first responders, and other stakeholders. Two of the five key areas addressed under EO 13650, is strengthening community planning and preparedness and enhancing federal operational coordination. As part of this effort, the Working Group implemented a pilot in the New York-New Jersey area to coordinate chemical facility preparedness planning and response activities. One of the greatest benefits from the pilot was the discussion of safety and security issues among all levels of government, the first responder community, and stakeholders. This interaction among pilot participants resulted in better working relationships, greater understanding of agency programs, coordination of work in the field, and sharing of critical information and data.

In addition, EPA provides Risk Management Plan (RMP) training for the regulated community, and conducts frequent outreach and education through a variety of means, including conducting training webinars, making presentations at trade association meetings and national conferences, providing training seminars, publishing written guidance materials available via the internet, operating a call center, and conducting direct facility compliance assistance.

RMP enforcement efforts include an increasing emphasis on the inspection of high-risk facilities, which include facilities with a history of serious accidents, facilities with very large quantities of regulated substances, and facilities with large surrounding populations.



## Questions Submitted for the Record by Senator Wicker

**Question 1:** I was disappointed to see that you are proposing eliminating funding for beach monitoring grants under the BEACH Act. These programs are vital to over 35 coastal communities, including my home state of Mississippi. These funds help support water quality and public notification systems.

What is the EPA's rationale for eliminating funding for the beach monitoring grant program in the 2015 budget request?

**Answer:** The FY 2015 budget meets the challenges of domestic spending constraints while still fulfilling EPA's mission to protect public health and the environment. The agency is proposing to eliminate certain mature program activities that are well-established, well understood, and where there is the possibility of maintaining some of the human health benefits through implementation at the local level. While beach monitoring continues to be important to protect human health, states and local governments now have the technical expertise and procedures to continue beach monitoring without federal support, as a result of the significant technical guidance and financial support the Beach Program has provided.

Furthermore, I would like to know more about the Clean Water Act and Clean Air Act.

**Question 2:** What percentage of local communities are currently in compliance with EPA requirements under the Clean Water Act and the Clean Air Act respectively?

**Answer:** There are a variety of requirements under federal law to protect health and the environment in communities. These requirements include provisions to reduce the discharge of raw sewage and contaminated stormwater into community rivers and residents' basements, requirements to protect the safety of drinking water, and restrictions on the emissions of air pollutants that can cause serious health problems. Some facilities to which these requirements apply are operated by local government entities and some are privately operated. For the purposes of this response, EPA is defining the compliance status of communities by the compliance status of regulated facilities within those communities.

The great majority of the information we have on compliance is self-reported – the facility itself monitors and reports on its compliance with the applicable rules. States and EPA do not have the resources to inspect even the large facilities sufficiently frequently to independently verify compliance. Smaller facilities present an even bigger challenge. In addition, our compliance data is primarily at the facility level, and it is not always easy to tell from the data which facilities are publicly operated and which ones are privately operated.

For our data on facilities with Clean Water Act obligations, it is somewhat easier to distinguish private from publicly operated facilities, and most sewage treatment facilities are

publicly run. We only have reliable data for major water dischargers (which means over 1 million gallons a day discharge); we cannot respond to your question for facilities smaller than that. Our records show that in 2013 there were 4,041 major publicly owned sewage treatment plants. In 2013, twenty-eight percent of these reported significant non-compliance, which are the more serious violations. Mayors across the country are concerned about these levels of violations and the importance of clean water to their residents. This is one of the reasons that we have had a multi-year effort, working with the Conference of Mayors and others, to adopt new more flexible approaches to better plan for protecting clean water, prioritizing the most important problems first, and find cost effective ways to remedy problems, while returning other benefits to the community, as we are doing with innovative green infrastructure approaches. We invite you to learn more about these approaches and the benefits they are creating for local communities in clean water, reduced energy demand and more livable communities at <http://cfpub.epa.gov/npdes/integratedplans.cfm>.

In the Clean Air program our data is less complete. Our records for 2013 indicate that there were 7,104 sources regulated under the Clean Air Act that were owned or operated by a county or municipality. In 2013, approximately 1.3% of these facilities were reported as in High Priority Violation status at some point during the year. For a variety of reasons, that is probably an under estimate of the actual violations. In the air program on-site inspections are an even bigger component of identifying serious violations, and, as with water pollution sources, states and EPA cannot inspect a significant portion of the facilities due to constrained resources. Accordingly, it is difficult to say with any confidence what number of facilities are in compliance. We know that communities across the country are concerned about the safety of the air they breathe, and we work hard with our state partners to identify and address the most serious violations.

**Question 3:** How many Voluntary Consent Agreements, or other similar judicial device, has the EPA entered into regarding the Clean Water Act and the Clean Air Act?

**Answer:** It appears that your question is asking about publicly owned facility judicial consent decrees. For publicly owned facilities, our data shows the following:

- During the period 2009 – 2013, EPA concluded 47 judicial consent decrees and 1 judicial order to address Clean Water Act violations at municipalities including Publicly Owned Treatment Works (POTWs), Combined Sewer Systems (CSOs), Sanitary Sewer Overflows (SSOs), and Municipal Separate Storm Sewer Systems (MS4s).
- During the period 2009 – 2013, EPA concluded 10 judicial consent decrees to address Clean Air Act (CAA) violations at county or municipal facilities.

**Question 4:** What has been the financial impact of those agreements on local communities?



**Answer:** The biggest part of our agreements with all community operated facilities under the Clean Water Act is generally the expense of undertaking the maintenance, repair and upgrading work that has been too long deferred. Pipes that have cracked or eroded, treatment plants that cannot handle the amount of sewage and contaminated stormwater being sent their way, and facilities that have not had the necessary O&M, are all examples of problems that the community addresses through our agreements. One of the challenges of these agreements is that the people who often bear the expense of the too long deferred maintenance and upgrades are the same people who bear the burden of exposure to raw sewage in local waterways or even their own basements, unsafe drinking water, and air that can aggravate asthma or cardiopulmonary disease, among many other problems.

For this reason, EPA works closely with communities through these agreements to get the most important work for protecting health accomplished in the most cost effective way, and on a schedule that is practical and affordable. The costs vary widely depending on the type of problem and the length of time that it has gone unaddressed.

We have been working with the Conference of Mayors and other groups to create additional flexibility to prioritize projects, consider appropriate length of schedules and other means to ensure that the methods chosen by the local community are affordable and practical, and reduce the financial impact of these agreements. The scope, schedule and cost framework for each agreement is different, and we fully agree with the communities' request that each situation be recognized as unique and treated in a way that is both consistent with the protections of the law and reasonable for the community.

Following up with questions from the hearing regarding EPA's Clean Air section 105 air quality management categorical grant program, I would like to ask the following questions.

**Question 5:** What is the allocation formula for the State Air Grants based on?

**Question 6:** When the allocation formula was first implemented, what was the distribution of funds to EPA regions?

**Question 7:** What are the projected changes in the distribution of funds for EPA regions after the new allocation formula is implemented?

**Answers 5, 6, 7:** EPA remains committed to beginning to implement the updated section 105 allocation formula in FY 2015. Working with our state and local partners, we will minimize disruption to their ongoing program operations by phasing the new formula in over a reasonable period of time.

To distribute the state air grants, the EPA allocates the section 105 grants to the 10 EPA Regions. Each region then negotiates individual workplans with recipients and awards the grant funding.

In implementing the new formula and assuming level funding, the northeast and northwest areas of the country (EPA Regions 1 and 10) would experience decreases by approximately a quarter and a third respectively in their distribution of resources. The southeast (EPA Region 4) distribution would increase by approximately a quarter. Some areas of the country would see smaller decreases (EPA Regions 5 and 6) while the remaining would see more modest increases (EPA Regions 2, 3, 7, 8, and 9).

To help mitigate the impact of the new allocation formula to state programs, we intend to implement a phased-in approach over a multi-year period beginning in FY 2015. To protect the integrity of ongoing state/local air program operations, we intend to moderate shifts in funding so that no Region would experience a decline of more than 5% of its prior year funding level in any one year.

Note: Since FY 2011, Congressional report language has directed EPA to continue to allocate funds under the old methodology.

| <b>EPA Region</b> | <b>FY 2014 Section 105 Direct Award Allocation % by Region</b> | <b>% from Updated Direct Award Allocation by Region</b> | <b>% Change with Implementing Updated Allocation</b> |
|-------------------|--|---|--|
| <b>Region 1</b>   | 8.55   | 6.18  | -27.72   |
| <b>Region 2</b>   | 9.43   | 9.76  | 3.50   |
| <b>Region 3</b>   | 11.01  | 11.57   | 5.09   |
| <b>Region 4</b>   | 12.42  | 15.31   | 23.27  |
| <b>Region 5</b>   | 16.70  | 15.19   | -9.04  |
| <b>Region 6</b>   | 9.86   | 8.83  | -10.45   |
| <b>Region 7</b>   | 3.74   | 4.01  | 7.22   |
| <b>Region 8</b>   | 5.37   | 5.77  | 7.45   |
| <b>Region 9</b>   | 17.57  | 19.71   | 12.18  |
| <b>Region 10</b>  | 5.35   | 3.67  | -31.40   |
|                   | 100.00   | 100.00  |  |



### Questions for the Record Submitted by Senator Fischer

**Question 1:** The EPA has issued a number of new regulations regarding emissions from electric generating units. What is the EPA's ultimate goal? Is the EPA trying to force utilities to take coal-fired power plants out of operation?

**Answer:** The EPA's mission is to protect human health and the environment. The proposed limits on carbon pollution from new and existing power plants are intended to implement the provisions of the Clean Air Act in a way that takes into account costs as appropriate, and the EPA expects that they will result in a continued diverse fuel mix.

**Question 2:** Is it fair to say that EPA would like to see the U.S. lessen its dependence on coal for electricity production?

**Answer:** The EPA is implementing the provisions of the Clean Air Act to reduce harmful air pollution from electricity production, while still maintaining a diverse energy supply that includes an important role for coal and natural gas.

**Question 3:** The EPA will soon be announcing new proposed regulations regarding greenhouse gas emissions from existing power plants. Do commercially available technologies currently exist to capture and store carbon emissions at power plants?

If yes, where? At what cost? Will vendors be able to deal with the demand created by the regulations?

**Answer:** In the recently issued Clean Power Plan, the EPA did not propose that retrofit carbon capture and storage is the "best system of emission reduction... adequately demonstrated" for reducing CO<sub>2</sub> at existing power plants.

**Question 4:** The power sector has announced the retirement of over 60 giga-watts of coal fired generation. This amounts to about 20 percent of the existing coal-fired generating capacity in the United States. These retirements will generally occur before 2020, with a great majority of the retirements occurring by the 2016 Mercury and Air Toxics Standards ("MATS") deadline. This loss of coal fired capacity is likely to continue due to new EPA rules, including the new CO<sub>2</sub> regulations for existing power plants, regulation of coal ash, and regional/local control measures required to attain the more stringent ozone and fine PM<sub>2.5</sub> standards. Furthermore, electric reliability problems posed by the continued loss of coal fired capacity could be exacerbated by the retirement of baseload nuclear generation. According to a recent white paper by Senator Murkowski: "Just last year, four nuclear reactors were closed, and a fifth unit is scheduled to close in 2014. Two of these facilities ... cited economic reasons as the basis for their closures even though the facilities received license renewals."<sup>4</sup> The power sector faces major challenges as to how it will replace a large amount of coal and nuclear baseload capacity. Please explain how the Agency intends to address this issue with regards to the upcoming section III (d) rule, including the steps it plans to take to ensure the reliability of the grid.

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<sup>4</sup> See Murkowski White Paper at page 9, footnote 41.

**Answer:** With an all-of-the-above approach, the Clean Power Plan recognizes that state plans for emission reductions can, and must, be consistent with a vibrant and growing economy and supply of reliable, affordable electricity to support that economy. It further reflects the growing trend, as exemplified by many state and local energy policies and programs, to shift energy production away from carbon-intensive fuels to a modern, more sustainable system that puts greater reliance on renewable energy, energy efficiency, and other low-carbon energy options. Based on our analysis, we expect that coal, oil, and natural gas will have an important role in a diverse U.S. energy mix for years to come. Under the proposed Clean Power Plan, the EPA projects that coal would have a 31% share of generation and natural gas would have a 32% share of generation in 2030. EPA's analysis shows that the proposed Clean Power Plan is unlikely to have any significant effect on electricity reliability. If a local reliability concern arises, the EPA is confident that it can be managed with existing tools and processes – especially taking into consideration the timing and compliance flexibilities in the guidelines.

The EPA estimates that the combined public health and climate benefits from the Clean Power Plan will be worth an estimated \$55 billion to \$93 billion in 2030. The public health and climate benefits are associated with emissions reductions achieved by the proposed rule alone. When the EPA estimates the benefits for rules, we include other rules that place emissions limitations on sources, such as MATS, CAIR, and various State programs, in the "baseline." This confirms that we have not double-counted any of the emissions, benefits, or costs that should be attributed to another rule.

**Question 5:** Given that efficiency improvements will be critical for lowering CO<sub>2</sub> emissions from power plant under any future section 111 (d) rule, what is the agency doing to remove the existing regulatory barriers to completing such efficiency improvement measures under the New Source Review program?

**Answer:** The EPA agrees that efficiency improvements can be a cost-effective way to reduce CO<sub>2</sub> emissions. The Clean Power Plan identifies efficiency improvements at fossil-fuel fired units as one of the building blocks of the best system of emission reduction for existing power plants. Under the proposed Clean Power Plan, states and units can work together to decide what kind of efficiency upgrades and emission changes might occur at a particular source. As a result of such flexibility and anticipated state involvement, the EPA expects that a limited number of affected sources would trigger NSR when states implement their plans. The EPA is requesting comment on whether, with adequate analysis and support, the state plan could include a provision that sources would not trigger NSR when complying with the standards of performance included in the state's Clean Power Plan.

**Question 6:** In the proposed rule, EPA makes its "adequately demonstrated" determination predominantly based on CCS demonstration projects that have received federal assistance under the Energy Policy Act of 2005 (EPA05). Notably, three of the four commercial scale CCS demonstration relied on by EPA have all been allocated an investment tax credit that was



established for "clean coal facilities" under Section 1307 of EPAAct05. However, Congress has placed specific limitations on EPA's authority to set Section 111 standards based on demonstration projects that receive federal assistance under these EPAAct05 programs. Specifically, these statutory limitations expressly bar EPA from considering the three commercial-scale CCS demonstration projects in making a determination under Section 111 that CCS is adequately demonstrated. Please explain why the Agency is ignoring this statutory limitation in the pending NSPS rulemaking.

**Answer:** The EPA does not believe that these provisions preclude its determination. The EPA has issued a Notice of Data Availability (NODA) that notes the availability of a Technical Support Document (TSD), in the rulemaking docket that details its position on this issue. It explains, "EPA interprets these provisions to preclude EPA from relying solely on the experience of facilities that received EPAAct05 assistance, but not to preclude EPA from relying on the experience of such facilities in conjunction with other information." Moreover, EPA based its determination on a number of projects and other information including projects that did not receive any assistance under the EPAAct05. In addition, the agency extended the public comment period for January 2014 proposal by 60 days to allow adequate time for the public to review and comment on the contents of the NODA and TSD.

**Question 7:** EPA's proposed rule defining the term "Waters of the United States" should allow stakeholders sufficient time to submit a robust and meaningful response to the proposal. Stakeholders need adequate time to develop analytical, technical, and economic information in response to the proposal. I understand that EPA and the Corps have taken years to develop a proposed rule. Will you commit to providing the public no less than 180 days for public comment?

**Answer:** The EPA and the Corps published their proposed rule clarifying protection under the Clean Water Act in the *Federal Register* on April 21, which began a 91-day public comment period that ends on July 21, 2014. The agencies' proposed rule was made publicly available on March 25. On June 10, 2014, the agencies notified stakeholders that they would extend the public comment period to October 20, 2014. This extension provides the public with 182 days to provide comment.

**Question 8:** In the proposal of the rule redefining "Waters of the United States," ditches are now considered to be part of the definition of a "tributary," which make them now come under federal jurisdiction, no "significant nexus" analysis even needed. How many ditches are now going to be a "water of the U.S." under this rule? We have a lot of ditches in my part of the country and if EPA is in the game of regulating them, farmers and ranchers are going to be pretty upset. The agriculture exemptions are not enough, farmers and ranchers are still going to have to get NPDES permits and 404 permits for things like spraying fields and pastures near ditches and ponds.

**Answer:** The proposed waters of the U.S. rule do not regulate any new types of waters and does not broaden historical coverage of the Clean Water Act. It does not expand regulation of



ditches, as certain ditches are currently regulated under our existing regulations. It, in fact, proposes to reduce jurisdiction over ditches by excluding certain intermittent ditches which are considered to be jurisdictional under existing regulations and the December 2008 guidance which is currently in effect. The proposed rule does this in section (b) of the regulatory language which states: "The following are not waters of the United States notwithstanding whether they meet the terms of paragraphs (a)(1) through (7) of this section." This language means that if a ditch qualifies as being exempt under paragraph (b), then it is exempt regardless of whether the ditch meets the definition of a tributary.

**Question 9:** How many more farms will need an SPCC plan based on the proposed rule? Will more livestock operations need 402 NPDES permits under this rule? Will more landowners need 404 permits?

**Answer:** The U.S. Army Corps of Engineers' and EPA's proposed rule, if finalized, would result in a narrowing of the scope of Clean Water Act (CWA) jurisdiction compared with the agencies' historic interpretations and their existing regulations. As such, the agencies do not anticipate many additional (or more) farms will require SPCC Plans or CWA permits under the proposed rule than are required currently. However, the agencies recognize that their efforts to make CWA definitions clearer and more consistent could impact implementation of these programs for agriculture, and the agencies welcome comments on this issue during the public comment period on the proposed rule to ensure that concerns raised by farmers and the agricultural industry are addressed in the agencies' rulemaking.

**Question 10:** EPA proposed a rule to redefine a "water of the U.S." Is it true that, in looking at costs, EPA did not update 20 year-old studies for inflation? Did EPA analyze each program under the Clean Water Act and whether that program would be expanded with this change and by how much?

**Answer:** At the time the economic analysis was developed, 2010 permit data was the most current information available. The cost estimate in the economic analysis was based on 2010 dollars, and all cost and benefit information was adjusted accordingly. The EPA analyzed the proposed rule's expected impact to each program under the Clean Water Act. The methodology and findings are documented in "Economic Analysis of Proposed Revised Definition of Waters of the United States," March 2014, which is in the docket for the proposed Waters of the U.S. rule. The agency invites comments on this document as part of the public comment period on the proposed rule and will update the analysis to support the final rule.

**Question 11:** How long and how much money does it currently take on average to get a nationwide permit? Is it safe to say that increasing the number of waters under federal regulation, especially if you're including ditches, dry streams, and isolated ponds and puddles, will increase the average time it takes to get a permit and will increase the average cost to get a permit?

**Answer:** Clean Water Act Section 404 permits are issued by the U.S. Army Corps of Engineers, not by EPA, so specific expertise regarding the cost and processing time

for these permits lies with the Corps. EPA and the Corps developed an economic analysis of the expected benefits and costs of the agencies' proposed "Waters of the U.S." rulemaking, which is available at [http://www2.epa.gov/sites/production/files/2014-03/documents/wus\\_proposed\\_rule\\_economic\\_analysis.pdf](http://www2.epa.gov/sites/production/files/2014-03/documents/wus_proposed_rule_economic_analysis.pdf). The agencies believe that the proposed rule will benefit businesses by increasing efficiency in determining coverage of the Clean Water Act.

The agencies' proposed rule does not protect any new types of waters that have not historically been covered under the Clean Water Act. The rule actually proposes to reduce jurisdiction and exclude certain ephemeral and intermittent ditches. "Puddles" have never been jurisdictional and will remain non-jurisdictional under the proposed rule.

**Question 12:** Can a third party sue me under the Clean Water Act if you have told me my dry streambed is not a "water of the U.S." in the form of a "jurisdictional determination" (JD), but that individual wants it to be?

**Answer:** A Corps or EPA jurisdictional determination would not be binding on a third party in a citizen suit enforcement action. The jurisdictional determination would likely be considered by the Court, but would not be binding on it.

**Question 13:** What is the EPA's definition for "significant nexus"?

**Answer:** The EPA and the U.S. Army Corps of Engineers are proposing a definition of "significant nexus" within their proposed rule to help provide clarity regarding a term described in Supreme Court opinions but not previously defined by the agencies. We believe that providing such a definition will increase consistency and predictability for permit applicants, agencies, and the public, and we invite comments on the proposed definition during the public comment period.

More specifically, the definition for "significant nexus" in the proposed rule developed by EPA and the Army Corps of Engineers is as follows:

"The term significant nexus means that a water, including wetlands, either alone or in combination with other similarly situated waters in the Region (i.e., the watershed that drains to the nearest water identified in paragraphs (a)(1) through (3) of this section), significantly affects the chemical, physical, or biological integrity of a water identified in paragraphs (a)(1) through (3) of this section. For an effect to be significant, it must be more than speculative or insubstantial. Other waters, including wetlands, are similarly situated when they perform similar functions and are located sufficiently close together or sufficiently close to a 'water of the United States' so that they can be evaluated as a single landscape unit with regard to their effect on the chemical, physical, or biological integrity of a water identified in paragraphs (a)(1) through (3) of this section." See, e.g., 79 Federal Register 22188, 22263 (April 21, 2014). The Federal Register preamble discusses this proposed regulatory definition at Id. pp. 22211-22214.



**Question 14:** How do the states feel about you taking federal control over "all waters?" Have you left any waters under their control? Have you consulted them?

**Answer:** The proposed rule does not purport to make all waters jurisdictional, but clarifies those waters that are jurisdictional in a manner consistent with the Clean Water Act (CWA) as interpreted by the U.S. Supreme Court. In fact, under the proposed rule, certain features are clearly stated not to be waters of the U.S. subject to programs under the federal Clean Water Act. State and local governments have well-defined and long-standing relationships in implementing affected CWA programs and these relationships will not be altered by the proposed rule. Forty-six states and the Virgin Islands have been authorized to administer the National Pollutant Discharge Elimination (NPDES) program under Section 402, while two states administer the Section 404 program. This action will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Consistent with the EPA and Corps policy to promote communications between the agencies and state and local governments, and in recognition of the vital role states play in implementation of the CWA, the EPA voluntarily undertook federalism consultation for this effort and met the terms of E.O. 13132 and EPA guidance for implementing the Order. The EPA and the Corps are seeking public comment to determine the limits of these jurisdictional areas. We continue to have discussions and outreach with our state partners.

**Question 15:** This proposal greatly expands the current definition of "waters of the U.S." under the Clean Water Act, opening them up to permitting requirements for ponds, ditches, and even dry streambeds that only hold water when there is a rainfall event. How do you explain to the agriculture community what the agency is doing?

**Answer:** The agencies' proposed rule will not expand Clean Water Act (CWA) jurisdiction beyond its historic scope. CWA programs for decades have asserted that ponds, ditches, and ephemeral streams are subject to CWA programs as waters of the U.S. The proposed rule will cover fewer waters than the current regulatory definition, because current regulations have not yet been revised to reflect U.S. Supreme Court decisions in 2001 and 2006 that constrain the scope of waters of the U.S.; that is the purpose of this rulemaking. The EPA and the Corps have been conducting outreach across the country with a variety of stakeholder groups, including the agricultural community. All agricultural exemptions and exclusions from Clean Water Act requirements that have existed for nearly 40 years have been retained in the proposal. In addition, the agencies jointly worked with the U.S. Department of Agriculture to develop an interpretive rule to clarify the Section 404(f)(1)(a) exemption to include 56 specific National Resource Conservation Service conservation practices that protect or improve water quality will not be subject to Clean Water Act dredge and fill permitting requirements. It is important to emphasize that the interpretive rule identifies additional activities considered exempt from permitting under Section 404(f)(1)(A), but does not reduce, in any manner, the scope of agriculture, silviculture, and ranching activities currently exempt from permitting under Section 404(t)(1)(A) including, for example, plowing, seeding, cultivation, minor drainage, etc. Farmers and producers will be able to



undertake the specific conservation practices without notification or permitting by ensuring that practices benefit water quality and are in accordance with Natural Resources Conservation Service standards.

**Question 16:** Does this rule increase the number of "waters" that could come under federal jurisdiction? Industry, unanimously believes the answer is yes. Doesn't it logically follow that if more waters are jurisdictional, more permits will be required?

**Answer:** The agencies' proposed rule, if finalized, would result in a narrowing of the scope of Clean Water Act jurisdiction compared with the agencies' historic interpretations and their existing regulations. The proposed rule will cover fewer waters than the current regulatory definition, because current regulations have not been revised to reflect U.S. Supreme Court decisions in 2001 and 2006 that constrain the scope of waters of the U.S. The proposed rule will provide greater consistency, certainty, and predictability nationwide by clarifying where the Clean Water Act applies and also where it doesn't. On a case-by-case basis, the agencies' proposed rule could result in additional permits being required for types of waters whose jurisdictional status has been uncertain and confusing as a result of these Supreme Court decisions. However, by providing clearer definitions of key terms in a regulation, clear categories of waters that are never jurisdictional, the agencies believe the proposed rule will provide certainty to landowners, industry, and other stakeholders and help facilitate the permitting process, while on balance covering fewer waters than the Clean Water Act's historic scope.

**Question 17:** Administrator, you said the proposal will provide clarity. However, it is 371 pages long. If a landowner wants to know whether waters on his property will require a federal permit, do you think he will be "clear" about that after he reads a 300+ page document? Is it your purpose to write a regulation so broad and vague that EPA is saying that "every water is now under federal jurisdiction?" I do not believe this is the kind of clarity landowners are asking for, or the Commerce Clause of the Constitution and the Clean Water Act allows.

**Answer:** The Agency is seeking clarity through this proposed rule, of which the rule language is only two pages long. The changes to the regulatory text require additional identical pages due to the numerous places in the Code of Federal Regulations where we are proposing to change the definition of waters of the United States, as the definition will apply to all Clean Water Act programs. The remaining pages in the *Federal Register* are the preamble of the proposed rule. The preamble provides background on why the rule was proposed and also contains an appendix for the scientific support of the proposed rule and an appendix on the legal underpinnings and support. The preamble also solicits specific comments from the public on the proposed rule and presents a number of alternative options for the public to provide input on. The EPA neither intends nor believes that every water is now under federal jurisdiction, nor would the proposed rule have that effect.

**Question 18:** Last November, the EPA proposed Renewable Fuel Standard targets for 2014 that would blend less fuel than we blended last year, impacting the economy in Nebraska. It does so using an approach that I find to be inconsistent with the law and previous regulations by inserting considerations about fuel delivery infrastructure into the annual target setting process. What steps is EPA taking to fix this proposed rule and respond to the hundreds of thousands of comments submitted for your consideration? When do you expect the final rule to be released?

**Answer:** Since the 2014 RFS volume proposal was released, the EPA has met with multiple stakeholders to listen to their input on the proposed rule and to solicit any new and relevant data that should be factored into setting the volume standards for 2014. These stakeholders include representatives from the biofuel sector, the agricultural sector, petroleum refiners, environmental groups, and various other organizations and sectors. The EPA also received over 300,000 comments on the 2014 RFS proposal, which we are currently evaluating. We anticipate issuing a final rule before the end of June.

**Question 19:** EPA announced plans to change the pathway approval process for new biofuels – a definite step in the right direction to mitigate unnecessarily long delays and wait times for new biofuels producers. Unfortunately, whatever positive benefits might come out of this process have been negated by the Agency's simultaneous announcement that new applicants refrain from submitting applications for a 6-month period, until EPA's new guidance is released. Coupled with the EPA's 2014 proposed volume rule under the RFS, and an already slow pathway approval process, this action only further creates unneeded uncertainty.

**Question 20:** Is it realistic to think that the EPA can get new guidance out in a 6 month period? Will this new process be subject to OMB review?

**Answer:** As stated in the EPA's March program announcement, these improvements are anticipated to be completed in approximately six months. The EPA is committed to meeting that timeframe and intend to complete all necessary steps -- as required by applicable statutes, regulations and executive orders -- within that timeframe.

**Question 21:** Why did the EPA include a pause on new applications during this window of time? Have you assessed the impact of this approach on investors and on the innovation pipeline for new biofuels?

**Answer:** As explained in the March program announcement, the EPA is continuing to review pending petitions that are high priority and petitions for which substantial modeling has already been done. Because we intend to provide new guidance, we have suggested that parties may want to delay their submissions until the new guidance is provided. We understand the importance of this petition process for companies developing new biofuel technologies, and we firmly believe that the long-term performance of the petition process will benefit from our streamlining efforts.



**Question 22:** Your announcement states that you will be setting priorities for processing while you are working on revisions to your approval process. Please provide the Committee with the list of applications that you will be processing and those that you will not during this period of time.

**Answer:** The full list of petitions under review is available here: <http://www.epa.gov/otaq/fuels/renewablefuels/new-pathways/rfs2-pathways-review.htm> . The goal of this improvement process is to enable more timely and efficient decision-making for all petitions. EPA staff have contacted all of the parties with petitions under review to discuss their status. We have explained that review is continuing for high priority petitions (based on the criteria listed in the March program announcement) and pending petitions for which substantial modeling has been done. For other petitions, for example those based on corn ethanol, we have explained that as part of the improvement process we are launching a more automated review process for petitions using previously approved feedstocks and well known production process technologies.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

AUG 12 2014

OFFICE OF THE  
CHIEF FINANCIAL OFFICER

The Honorable Harold Rogers  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am transmitting the U.S. Environmental Protection Agency's response to the May 2014 Government Accountability Office report entitled, *Pesticide Safety: Improvements Needed in EPA's Good Laboratory Practice Inspection Program* (GAO-14-289). The EPA prepared this response pursuant to 31 U.S.C. 720.

The Environmental Protection Agency generally agrees with the GAO's findings, conclusions and recommendations in this report. The responses below address each individual GAO recommendation.

**GAO Recommendation:**

To improve the [agency's Office of Enforcement and Compliance Assurance Good Laboratory Practices] inspection process, the EPA Administrator should assess the authority and need for a fee-based inspection system, and if such a system is warranted, establish a user fee system, seeking additional legislative authority, if necessary, to make the laboratory inspection program self-sustaining.

**EPA Response:**

The EPA agrees with the recommendation. The agency agrees to assess the authority, need and feasibility of a fee-based system, and if warranted, begin taking the appropriate (including legal) steps necessary to establish such a user fee system.

**GAO Recommendation:**

To improve the OECA GLP inspection process, the EPA Administrator should direct OECA and [Office of Pesticide Programs] to ascertain the exact causes of inaccurate and incomplete data in its databases and take action to ensure that the data, such as identification of performing laboratories and inspection history, are accurately recorded.

**EPA Response:**

The EPA agrees to ascertain the exact causes of inaccurate and incomplete data and to take action to ensure that the data are accurately recorded.

**GAO Recommendation:**

To improve the OECA GLP inspection process, the EPA Administrator should direct OECA and OPP to develop documented procedures to coordinate and prioritize laboratories for inspections.

**EPA Response:**

The EPA agrees to develop written procedures for coordination and prioritization of GLP inspections between OECA and OPP.

**GAO Recommendation:**

In addition, the EPA Administrator and the [Food & Drug Administration] Commissioner should develop a formal written agreement, such as a memorandum of understanding, that outlines how the two agencies plan to regularly collaborate and share information on GLP inspections and avoid duplication of inspections so that EPA can more efficiently use its limited resources.

**EPA Response:**

The EPA agrees with the recommendation and will work with the FDA to develop a written standard operating procedure for collaboration between the two GLP programs.

The EPA appreciates GAO's feedback on opportunities to improve its Good Laboratory Practice inspection program. The EPA is committed to acting on those recommendations as described above. If you have any further questions, please contact me or your staff may contact Christina Moody in the EPA's Office of Congressional and Intergovernmental Relations, by phone at (202) 564-0260, or by email at [moody.christina@epa.gov](mailto:moody.christina@epa.gov).

Sincerely,

A handwritten signature in cursive script, appearing to read "Maryann Froehlich".

Maryann Froehlich  
Acting Chief Financial Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 18 2013

The Honorable John Shimkus  
Chairman  
Subcommittee on Environment and Economy  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

OFFICE OF CONGRESSIONAL AND  
INTERGOVERNMENTAL RELATIONS

Dear Mr. Chairman:

Thank you for your letter of July 9, 2013, to the U.S. Environmental Protection Agency, inquiring about the agency's analysis of the economic impacts of our regulations. We share an interest in continuing to ensure that robust, rigorous, and impartial economic analysis remain a cornerstone of EPA's regulatory process. The enclosure, prepared by EPA staff, contains further information on the agency's work on economic modeling as well as initial responses to your requests for documents and information.

The agency takes economic analysis very seriously. As we have done consistently through multiple administrations, we apply EPA's peer-reviewed *Guidelines for Preparing Economic Analyses* (Guidelines). The EPA's Guidelines establish a sound scientific framework for performing economic analyses of environmental regulations, actions and policies. Using these peer-reviewed guidelines, the EPA performs detailed regulatory impact analyses (RIAs) for each major rule at the proposal stage, including benefit-cost analysis, various types of economic impacts analysis, and analysis of any significant small business impacts. Each draft RIA then goes through public notice and comment, and the resulting input from stakeholders and the public is taken into account in developing the final economic analysis.

Although the EPA already sets and meets high standards for the quality and transparency of our economic analyses, we are continually working to improve our tools and capabilities in this sphere. For example, the EPA is working with its Office of the Science Advisory Board to establish an expert panel specifically to advise the agency on the use of economy-wide modeling to estimate the whole economy impacts resulting from the benefits and compliance costs of EPA regulations. This panel, which is being convened pursuant to the Federal Advisory Committee Act, will ensure a transparent process through which the agency can receive advice from relevant subject matter experts as well as input from the broader public and interested stakeholders. The enclosure describes some of the other steps we are taking to update and improve the models and other tools employed by the agency in assessing the benefits and costs of our regulations.

With regard to your concerns specifically about the EPA's employment analysis, the agency is keenly aware that these are tough economic times and there is particular concern about impacts on employment. That is why we have expanded our discussions of possible employment impacts (both positive and negative) in our rules. It is important to note that the EPA uses different approaches for employment analysis for different rules (drawing on peer-reviewed research),



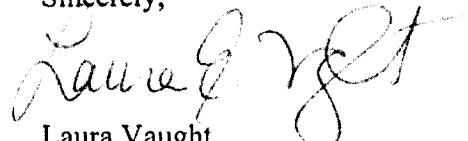
always takes public comment on those analyses, and has worked with academic researchers to improve our understanding of available tools. More generally, the EPA has worked hard to characterize any economic impacts carefully and work with industry and other stakeholders to find ways to minimize negative impacts, in a manner consistent with statutory requirements, while still achieving environmental protection. The enclosure provides further information regarding our work on assessing employment effects.

Even as we work to continually improve our economic analyses, it is important to recognize that analysis and debate regarding the economy-wide impacts, including employment impacts, of EPA regulations is not a new phenomenon. Most major EPA rules have been adopted amidst claims that they would be bad for the economy and bad for employment. Some business groups claimed that the Clean Air Act Amendments of 1990 would cost at least 200,000 jobs and up to two million jobs.<sup>10</sup> The economy-wide net job losses predicted by industry never occurred. In fact, peer-reviewed academic studies that have looked for large net job losses as a result of environmental protection have failed to find such effects.<sup>11</sup> History has shown, again and again, that we can clean up pollution, create jobs, and grow our economy all at the same time. Since 1970, air pollution has declined 68% while the economy has grown 212%.<sup>12</sup>

I want to reiterate that the EPA believes strongly in providing the public with sound information about the impacts of its regulations through its regulatory impact analyses. The agency is transparent in its regulatory impact analyses about which impacts it can quantify using peer-reviewed approaches and which costs, benefits, and impacts can only be treated qualitatively. There is a robust public comment process on every regulation, on which we depend, in addition to ongoing research, to further improve this work.

Again, thank you for your letter. If you have any further questions, please contact me, or your staff may contact Cheryl Mackay in my office at (202) 564-2095.

Sincerely,



Laura Vaught  
Associate Administrator

Enclosures

cc: The Honorable Paul Tonko  
Ranking Member

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<sup>10</sup> Hahn, Robert, and Wilbur Steger (1990). An Analysis of Jobs at Risk and Job Losses from the Proposed Clean Air Act Amendments (Pittsburgh: CONSAD Research Corporation)

<sup>11</sup> Richard D. Morgenstern, William A. Pizer, and Jhih-Shyang Shih . Jobs Versus the Environment: An Industry-Level Perspective. *Journal of Environmental Economics and Management* (May 2002) Vol. 43, no. 3 pp. 412-436.  
Berman E. and L. Bui Environmental regulation and labor demand: evidence from the South Coast Air Basin. *Journal of Public Economics* (Feb 2001) Vol. 79, no. 2 pp. 265-295.

<sup>12</sup> <http://www.epa.gov/airtrends/aqtrends.html#comparison> (link on page to:  
<http://www.epa.gov/airtrends/images/comparison70.jpg>)



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

AUG 24 2012

THE ADMINISTRATOR

The Honorable Barbara Boxer  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Dear Chairman Boxer:

I am pleased to renew the charter of the National Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The National Advisory Committee is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The committee will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina J. Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Lisa P. Jackson", is written over a horizontal line.

Lisa P. Jackson

Enclosure

JUN - 7 2015



The Honorable Barbara Boxer  
United States Senate  
Washington, D.C. 20510

Dear Senator Boxer:

Thank you for your letter of September 26, 2014, to President Barack Obama concerning the regulation of methane in the oil and gas sector. The President asked us to respond directly to you.

The Administration is committed to addressing this source of greenhouse gas emissions, and on January 14, 2015, announced a series of actions that the Environmental Protection Agency (EPA) and other Federal agencies will take to cut methane emissions. In particular, the Department of the Interior (DOI) and the EPA are working to develop regulations and other actions that would have the effect of reducing methane emissions from oil and gas production.

The EPA is in the process of taking a number of steps to address methane and smog-forming volatile organic compound (VOC) emissions from the oil and gas industry to ensure continued, safe, and responsible growth in U.S. oil and natural gas production. These actions will reduce methane pollution and VOCs from new and modified sources in this growing industrial sector, as well as from existing sources in areas that do not meet Federal health-based standards for ozone pollution. They will also build on efforts by states and industry to address emissions from existing sources elsewhere. The strategy draws on five technical white papers the EPA issued in April 2014 and the comment and input received in response. All of this information demonstrates that technology is now available that can significantly reduce emissions of methane and VOCs from oil and gas activities.

The EPA strategy includes building upon the 2012 New Source Performance Standards for the oil and natural gas industry by proposing cost-effective, commonsense standards this summer for new oil and gas sources that are significant emitters of methane and VOCs. The EPA also plans to extend VOC reduction requirements to certain existing sources by proposing Control Technique Guidelines (CTGs) that provide analysis of the available, cost-effective technologies for controlling VOCs. Because many VOC controls also reduce methane, the CTGs will achieve methane reductions at the same time. These rules will be developed in an open and transparent way with opportunities for public comment. In addition to regulatory activities, EPA plans to expand the successful Natural Gas STAR program by launching a new partnership in collaboration with the Department of Energy and leading companies later in 2015. To learn more about this plan, please visit <http://www.epa.gov/airquality/oilandgas/pdfs/20150114fs.pdf>.



For its contribution, the DOI's Bureau of Land Management (BLM) is collaborating with its Federal partners (including EPA), state governments, tribal communities, and the private sector to update decades-old standards to reduce wasteful venting, flaring, and leaks of natural gas from oil and gas wells on Federal and Indian lands. During the spring of 2014, the BLM conducted a series of public outreach sessions in North Dakota, New Mexico, Colorado, and Washington, DC to begin a dialogue with interested parties. Input from these efforts is informing the BLM's ongoing development of a proposed rule, which the BLM plans to publish in the coming months. A final rule would enhance our energy security and economy by boosting America's natural gas supplies, ensure that taxpayers receive the royalties due to them from development of public resources, and reduce emissions of methane, carbon dioxide, and other air pollutants. The BLM is coordinating closely with the EPA to ensure an integrated approach to these upcoming regulations.

We agree that reducing methane from oil and gas operations is a key element of U.S. climate change mitigation efforts. As always, the Federal Government has much to learn from our state partners, and we look forward to working with you and states across the country as we move forward with these important actions.

We appreciate your interest in this important issue. If you have further questions, please contact us or your staff may contact Kevin Bailey in the EPA's Office of Congressional and Intergovernmental Relations at [bailey.kevinj@epa.gov](mailto:bailey.kevinj@epa.gov) or (202) 564-2998 or BLM Legislative Affairs Division Chief Patrick Wilkinson at [p2wilkin@blm.gov](mailto:p2wilkin@blm.gov) or (202) 912-7429. A similar response is being sent to the co-signers of your letter.

Sincerely,



Janice M. Schneider  
Assistant Secretary  
Land and Minerals Management  
U.S. Department of the Interior



Janet G. McCabe  
Acting Assistant Administrator  
Office of Air and Radiation  
U.S. Environmental Protection Agency



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**REGION IX**

**75 Hawthorne Street  
San Francisco, CA 95105-3901**

**JUL 31 2014**

**OFFICE OF THE  
REGIONAL ADMINISTRATOR**

The Honorable Barbara Boxer  
United States Senate  
Oakland Office - Attention: Ms. Madeline Peare  
70 Washington Street, Suite 203  
Oakland, CA 94607

Dear Senator Boxer:

EPA shares your concerns regarding potential health impacts posed by PCBs at Malibu High School, Malibu Middle School and Juan Cabrillo Elementary School. At the invitation of Ms. Jennifer deNicola, President of Malibu Unites, on June 20, 2014, I toured Malibu High School and met with Ms. deNicola, representatives of her organization, school officials, and teachers to hear their concerns firsthand.

PCBs were widely used in building materials in the United States, including in school construction, from the 1950s until 1979. Recognizing the concerns from widespread exposure to PCBs, in 1976, Congress passed the Toxic Substances Control Act (TSCA), which among other things bans the use of PCBs, other than in a totally enclosed manner or as authorized by EPA via rulemaking.

In recent years, EPA has devoted considerable resources and attention to identifying PCB exposure pathways of concern and how best to limit or mitigate those pathways. Recent scientific studies, including a 2012 study by EPA's Office of Research and Development (ORD), show that primary health concerns from PCBs in building materials derive from inhalation of contaminated air; and secondarily from contact with PCBs in dust and subsequent incidental ingestion.

In her letter to you, Ms. deNicola requests that EPA require testing of all potential PCB sources at the Malibu High School. Based upon the science, EPA's current recommended approach for school managers is to focus testing on air and dust for PCBs to assess the level of hazard, if any, to student and teacher populations. To the extent that any levels of concern in air or dust are identified, schools should address the primary source of the health risk, including incorporating additional and more extensive cleaning practices and PCB-source identification and removal where necessary.

The District has been responsive to the above protocol by taking extensive air and dust samples in classrooms at Malibu High School in preparation for classes to begin in fall, based on EPA-approved procedures. All air samples but one have shown PCB concentrations below the Agency's public health guidelines. The District did discover a low number of dust samples where PCBs were elevated. The District has taken quick action to incorporate a cleaning and testing program at the High School that EPA believes will effectively address this pathway of human exposure. The District's testing and cleaning work concludes on August 8. The District has also been inspecting light fixtures to ensure that PCB-containing ballasts have been removed. Although most ballasts were previously removed, several

existing light fixtures show staining from past PCB ballast leaks. The District plans to remove the stained light fixtures.

In her letter to you, Ms. deNicola also asks for the immediate removal of all known PCB sources at Malibu High School that contain PCBs at or above 50 ppm. Specifically, last October, the District voluntarily collected caulk samples that identified four classrooms where PCBs in the caulk exceeded that regulatory limit.

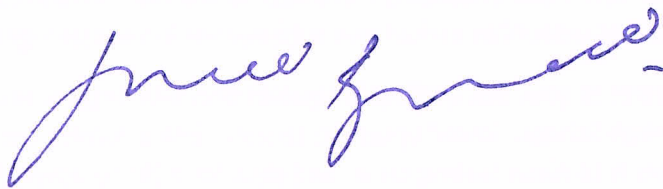
I concur that the TSCA regulations do not authorize the use of building materials containing PCBs above 50 ppm. The District's plan submitted to EPA on July 3, 2014, proposes to remove PCB-containing material in the four classrooms during renovation or demolition of the buildings. This proposal is currently under review. During the week of August 11, we will provide our conclusions about the work conducted this summer by the District and outlining a path forward for completing removal of PCBs required under TSCA. School opens the following week.

To reiterate, EPA continues to take the concerns raised by teachers and parents at Malibu High School very seriously. We are committed to ensuring that students and teachers at this school, as in all schools, are safe from exposure to PCBs. For this very reason, the focus of our efforts has been on partnering with the District to identify the human exposure pathways of greatest concern, namely air and dust, and making sure that those pathways are effectively addressed in a manner that makes the High School safe now and into the future.

For your information, enclosed with this letter is an earlier correspondence EPA sent to Ms. deNicola regarding PCBs at Malibu High School.

Thank you for your attention to this matter. For further assistance, please contact Congressional Liaison, Brent Maier, at (415) 947-4256.

Jared Blumenfeld

A handwritten signature in blue ink, appearing to read "Jared Blumenfeld", is written below the printed name.





**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

**SEP 13 2013**

The Honorable Harold Rogers  
Chairman, Committee on Appropriations  
House of Representatives  
Washington, D.C. 25015-1705

Dear Congressman Rogers:

Thank you for your July 31, 2013, letter to Gina McCarthy, Administrator of the United States Environmental Protection Agency, requesting that the EPA consider the recent proposal from Dr. Leonard K. Peters, Secretary of the Kentucky Energy and Environment Cabinet (KEEC), to assume the lead in the characterization and cleanup efforts at the former AK Steel Coke Plant located in Ashland, Kentucky (Facility). Your letter was forwarded to the EPA Region 4 office in Atlanta, Georgia, for response.

We have given careful consideration to the KEEC proposal and the enclosed letter provides the EPA's response to Dr. Peters. As mentioned in your letter, the EPA has investigated and identified significant environmental issues related to hazardous waste management activities at the Facility. Based on these investigations and our serious concerns regarding potential contamination that may have resulted from AK Steel Corporation's (AK Steel) activities at the Facility, the EPA issued AK Steel an Order pursuant to Section 3013 of the Resource Conservation and Recovery Act (RCRA) requiring characterization of potential contamination in certain areas at the Facility. The Order requires AK Steel to develop and submit a comprehensive Sampling and Analysis Plan (SAP) to conduct the characterization. The SAP must be approved by the EPA prior to implementation. We have been working very diligently with AK Steel to develop an adequate SAP, but have had to disapprove two draft SAP submittals due to significant deficiencies in the proposed plans. We are currently waiting for a revised SAP addressing our most recent comments of August 15, 2013. We are committed to ensuring that AK Steel conducts all necessary site assessment activities as quickly as possible. AK Steel's prompt submittal of an approvable SAP will in turn lead to an expeditious determination of all necessary RCRA closure and/or cleanup activities required to be conducted by AK Steel and/or any potential buyer(s) of the property.

We believe that it is critical to continue all necessary cleanup and enforcement activities at the Facility pursuant to applicable RCRA authorities. In fact, based on the significance of the issues and environmental concerns identified during our investigation, the EPA has referred this matter to the U.S. Department of Justice (DOJ). We have extended an offer for the Commonwealth of Kentucky to partner with us and the DOJ in addressing this site.

We are very sensitive to the needs of the local community and strongly support the expedited redevelopment and reuse of the property. Please be assured that we extend our willingness and commitment to work closely with the Commonwealth of Kentucky, AK Steel and/or any potential buyers of the site to evaluate options for redevelopment and reuse of the property throughout the remediation process.

Through cooperation between AK Steel and the federal and state agencies involved, this property can be addressed in an expeditious manner so that it may be returned to productive economic opportunities and reuse. We appreciate your interest in this matter, and if you have any questions or need additional information from the EPA, please contact me or the Region 4 Office of Congressional Relations at (404) 562-8327.

Sincerely,

A handwritten signature in black ink, appearing to read "A Stanley Meiburg". The signature is stylized with a large initial "A" and a long, sweeping horizontal stroke.

A. Stanley Meiburg  
Acting Regional Administrator

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

**JUN 19 2012**

OFFICE OF CONGRESSIONAL AND  
INTERGOVERNMENTAL RELATIONS

The Honorable John Shimkus  
Chairman  
Subcommittee on Environment and the Economy  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This is in response to your letter of June 6, 2012, co-signed by a number of your colleagues, regarding the Committee's request that a former U.S. Environmental Protection Agency Regional Administrator, Dr. Alfredo Armendariz, testify at a June 6, 2012, hearing of the Committee on Energy and Commerce's Subcommittee on Energy and Power.

As you know, due to scheduling conflicts, the EPA was not able to participate in this hearing, which focused on the EPA's enforcement of our nation's environmental laws. Your letter asks several questions about the agency's interactions with Dr. Armendariz with regard to his decision to not appear before the Subcommittee for the June 6 hearing. While the agency did have limited conversations with Dr. Armendariz regarding the Committee's invitation to testify, the agency did not provide advice on whether to appear.

At Dr. Armendariz's request, EPA staff held several telephone briefings with Dr. Armendariz to assist him in preparing to testify before the Subcommittee. Dr. Armendariz's agreement to testify before the Subcommittee was taken as a given in these discussions, and EPA staff did not discourage him from testifying nor did they otherwise address the question whether to testify. As reflected in the enclosed documents, Dr. Armendariz at the last minute canceled a telephone briefing with EPA staff that had been scheduled for June 4, 2012. EPA staff were unaware of Dr. Armendariz's decision not to testify until they were notified of this decision by Committee staff and news reports.

We have identified a small number of documents responsive to your request, which are enclosed. The EPA has conducted a diligent search and is unaware of any further documents responsive to your request.



Thank you for your inquiry. Should you have additional questions, please feel free to contact me or have your staff call Steven Kinberg in my office at (202) 564-5037.

Sincerely,

A handwritten signature in black ink, appearing to read 'Arvin Ganesan', written over a faint circular stamp.

Arvin Ganesan  
Associate Administrator

Enclosures

cc: The Honorable Gene Green  
Ranking Member



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUN - 8 2012

THE ADMINISTRATOR

The Honorable Barbara Boxer  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Dear Chairman Boxer:

I am pleased to renew the National Advisory Council for Environmental Policy and Technology in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The National Advisory Council for Environmental Policy and Technology is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The National Advisory Council for Environmental Policy and Technology will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Clara Jones in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-3701.

Sincerely,

A handwritten signature in black ink, which appears to read "Lisa P. Jackson", is written over a horizontal line.

Lisa P. Jackson

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

**JAN - 3 2013**

OFFICE OF CONGRESSIONAL  
AND INTERGOVERNMENTAL RELATIONS

The Honorable John Shimkus  
Chairman  
Subcommittee on Environment and the Economy  
Committee on Energy and Commerce  
United States House of Representatives  
Washington, DC 20515-5115

Dear Mr. Chairman:

Thank you for your letter of June 19, 2012, to EPA Administrator Lisa P. Jackson and Chairwoman Heather Zichal, of the Interagency Working Group to Support Safe and Responsible Development of Unconventional Domestic Natural Gas Resources, in which you raised questions regarding Executive Order 13605, "Supporting Safe and Responsible Development of Unconventional Domestic Natural Gas Resources" and the charges of the Working Group. This letter and its enclosure serve as the response to your letter.

Since taking office, President Obama has focused on developing every available source of American energy, including natural gas, which has been a critical element of the Administration's all-of-the-above approach to energy policy. As you know, domestic natural gas production has increased each year President Obama has been in office and the United States is currently the world's leading producer of this resource. In addition, thanks to recent advances in technology, we now have access to an increased, economically-viable supply of natural gas and our ability to develop it safely and responsibly will bring significant economic, environmental, and geopolitical benefits to the country. That is why this Administration has and will continue to take steps to support the prudent development of this energy resource.

As part of those broader efforts, it is important to emphasize that the EPA is committed to ensuring scientific integrity in its research, in accordance with the agency's Scientific Integrity Policy and as directed by Congress in their request to the EPA to conduct its *Study of the Potential Effects of Hydraulic Fracturing on Drinking Water Resources*. As directed by Congress, the EPA is adhering to the following six principles in carrying out the Congressional request: (1) using the best available science; (2) incorporating independent sources of information; (3) following rigorous quality assurance procedures; (4) consulting with stakeholders; (5) conducting the research in a transparent manner; and (6) subjecting the research to a rigorous and independent peer review.

Moreover, as a science-driven agency, the EPA takes seriously its obligation to meet the highest standards of scientific integrity and transparency. The EPA is committed to using the best possible science as a foundation for all of the agency's work, including how we are conducting the study.



Again, thank you for your letter. If you have any further questions, please contact me or your staff may contact Pamela Janifer of my staff at (202) 564-6969.

Sincerely,



Arvin Ganesan  
Associate Administrator

Enclosure

Identical Letters to:

Chairman Fred Upton  
Committee on Energy and Commerce

Chairman Joe Barton  
Chairman Emeritus

Vice Chairman Tim Murphy  
Subcommittee on Environment and the Economy

Chairman Joseph R. Pitts  
Subcommittee on Health

Congresswoman Cathy McMorris Rodgers

Congressman Gregg Harper

Congressman Bill Cassidy

Congressman John Sullivan

Congressman Robert E. Latta

Congressman Cory Gardner

Cc: The Honorable Henry A. Waxman, Ranking Member

The Honorable Gene Green, Ranking Member  
Subcommittee on Environment and the Economy



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

JUL 2 2012

The Honorable Senator Barbara Boxer  
United States Senate  
**Attention: Joshua Quigley, Field Representative**  
70 Washington Street, Suite 203  
Oakland, CA 94607

Dear Senator Boxer:

Thank you for your letter of June 13, 2012 to the U.S. Environmental Protection Agency (EPA) in support of the San Francisco Estuary Partnership's (SFEP) proposal: "Flood Control 2.0, Rebuilding Habitat and Shoreline Resilience through a New Generation of Flood Control Design" submitted for funding to EPA's San Francisco Bay Water Quality Improvement Fund.

The grant competition closed on May 4, 2012 and we received 14 final proposals requesting over \$11 million. Approximately \$6.4 million are currently available. We completed the review process and selected 10 proposals, including SFEP's Flood Control 2.0 proposal, for grant funding. All applicants have been notified and we expect grant awards to be made in September 2012.

Again, thank you for your letter. If you have further questions please contact me at 415-972-3409 or Brent Maier in EPA Region 9's Office of Public Affairs at 415-947-4256.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Nancy Woo".

Nancy Woo  
Acting Director, Water Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 16 2012

OFFICE OF  
SMALL BUSINESS  
PROGRAMS

The Honorable Barbara A. Mikulski  
United States Senator  
60 West Street, Suite 202  
Annapolis, Maryland 21401-2448

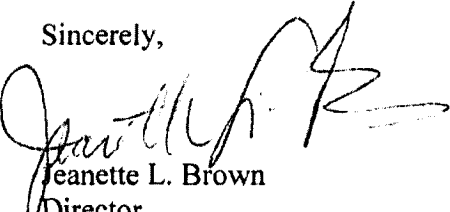
Dear Senator Mikulski:

Thank you for the invitation to participate in the Baltimore Washington Corridor Chamber of Commerce's Government Procurement Fair. The U.S. Environmental Protection Agency's Office of Small Business Programs is delighted to attend again this year. This Fair will be a great opportunity for representatives from the Office of Small Business Programs to meet with prospective vendors from the small business community.

The EPA's support of small businesses is continuous and strong. We understand that small businesses are the heart of the American economy. The Baltimore Washington Corridor Chamber of Commerce's Government Procurement Fair provides an excellent opportunity for the EPA to provide outreach to the small business community of the greater Baltimore, Washington, DC area.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Clara Jones in the EPA's Office of Congressional and Intergovernmental Relations at 202-564-3701.

Sincerely,

  
Jeanette L. Brown  
Director

cc: Mr. H. Walter Townshend, III  
President & CEO  
Baltimore Washington  
Corridor Chamber





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 31 2012

OFFICE OF THE  
CHIEF FINANCIAL OFFICER

The Honorable Harold Rogers  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am transmitting the U.S. Environmental Protection Agency's response to the May 2012 Government Accountability Office report entitled, *Uranium Mining: Opportunities Exist to Improve Oversight of Financial Assurances* (GAO-12-544). The EPA prepared this response pursuant to 31 U.S.C. 720.

To help better ensure that financial assurances are adequate for uranium mining operations on federal land, GAO recommended three actions, one directed towards the Administrator of the EPA.

**GAO Recommendation**


To enhance data collection efforts on abandoned mines, we recommend that Secretaries of the Interior and of Agriculture and the Administrator of the Environmental Protection Agency work to develop a consistent definition of abandoned mine sites for use in data-gathering efforts.

**EPA Response**

The EPA agrees with the GAO's recommendation. The EPA suggested this recommendation during the March 28, 2012, Federal Mining Dialogue (FMD) meeting in Washington, D.C. The FMD representatives from the EPA, the U.S. Department of Interior (DOI) and the U.S. Department of Agriculture (USDA) agreed that they will work to develop a consistent definition of abandoned mine sites, if possible. However, the FMD members note that it may be challenging to develop a consistent definition of abandoned mines because of the legal authorities that each agency implements. An example of this challenge is that the DOI and the USDA may identify, prioritize and address mine safety issues at abandoned mines whereas the EPA may not identify or address these types of sites. Another example is that the EPA considers mineral processing facilities as hardrock mining sites but the DOI and the USDA may not.

Thank you for the opportunity to respond to this recommendation. We appreciate the information and detailed feedback provided by the GAO concerning areas addressed in this audit. If you have any questions, please contact me or your staff may call Christina Moody, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Bennett', with a long horizontal flourish extending to the right.

Barbara J. Bennett  
Chief Financial Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

AUG 10 2012

OFFICE OF THE  
CHIEF FINANCIAL OFFICER

The Honorable Harold Rogers  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am transmitting the U.S. Environmental Protection Agency's response to the June 2012 Government Accountability Office report entitled, *Phosphate Mining: Oversight Has Strengthened, but Financial Assurances and Coordination Still Need Improvement* (GAO-12-505). The EPA prepared this response pursuant to 31 U.S.C. 720.

To ensure effective oversight of phosphate mining operations and reclamation and cleanup, the GAO made three recommendations to the Secretary of the Interior and one to the Administrator of the EPA.

**GAO Recommendation**

We recommend the Administrator of EPA ensure the agency complete its plan to assess whether corporate guarantees are an adequate financial mechanism, including giving due consideration to the experience of EPA Region 10 and BLM in using such assurances. If EPA determines that corporate guarantees are not an appropriate form of financial assurance, then their use should be prohibited in the financial assurance regulations that the agency expects to promulgate for the mining industry.

**EPA Response**

The EPA agrees with the GAO's recommendation. As stated in the EPA's April 20, 2012 response on the draft report, the agency is currently developing proposed regulations under Section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) that would require financial responsibility for classes of facilities within the hardrock mining industry. As part of development of the proposed regulations, the EPA is evaluating the protectiveness and administrative cost of the use of a financial test by an owner or operator and by a corporate guarantor. The EPA is considering its experience in implementing financial responsibility requirements, including the financial test and corporate guarantee, as part of that evaluation. In addition, the EPA will consult with federal land managers, including the Department of the Interior's Bureau of Land Management (BLM), as the agency develops the proposed rule. These activities, we believe, are responsive to GAO's recommendation.

Thank you for the opportunity to respond to this recommendation. We appreciate the information and detailed feedback provided by the GAO concerning areas addressed in this audit. If you have any questions, please contact me or your staff may call Christina Moody, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Bennett', with a stylized flourish at the end.

Barbara J. Bennett  
Chief Financial Officer





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 10 2012

OFFICE OF CONGRESSIONAL  
AND INTERGOVERNMENTAL RELATIONS

The Honorable John Shimkus, Chairman  
Subcommittee on Environment and the Economy  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Shimkus:

Thank you for your letter of August 7, 2012, requesting responses to Questions for the Record following the June 21, 2012, hearing before the Subcommittee on Environment and the Economy entitled, "Electronic Submission of Hazardous Waste manifests- Modernizing for the 21st Century."

The responses to the questions are provided as an enclosure to this letter. If you have any further questions, please contact me or your staff may contact Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-1859.

Sincerely,

A handwritten signature in black ink, which appears to read "Laura J. Vaught", is positioned above the typed name.

Laura Vaught  
Deputy Associate Administrator  
for Congressional Affairs

Enclosure

cc: The Honorable Gene Green, Ranking Member  
Subcommittee on Environment and the Economy

**EPA Responses to Questions for the Record from the  
June 21, 2012 Hearing on “Electronic Submission of Hazardous Waste Manifests –  
Modernizing for the 21st Century”  
Before the House Energy and Commerce Committee  
Subcommittee on Environment and the Economy**

**Responses to Questions from Subcommittee Chairman John Shimkus**

**Q1: Does EPA consider the use of an electronic manifest system to be a better way to avoid unintended paperwork and improve data quality?**

Answer: Yes. For several years, the EPA has stated that one of the principal benefits from an eManifest system will be the reduction of the paperwork burden and compliance costs associated with the use of the current paper forms. Most manifests are associated with repeat transactions between a particular generator, the transporter, and a waste management facility regarding the management of hazardous wastes. The eManifest system will enable the manifests for these repeat transactions to be more easily prepared with templates or other time-saving processes, and will avoid the substantial burden that companies and states incur from keying and re-keying data between their data systems and paper forms. Because eManifest will eliminate these and other manual steps involved with the use of the paper forms, we expect that the use of eManifest will reduce paperwork burdens substantially. Data quality should also be greatly improved, because the system will retain customers' commonly used waste and handler information in these templates, and there will be edit checks included in the system design to minimize data entry and transcription errors, as well as errors that currently result from handwritten and illegible entries on paper copies.

**Q2: While section 3002 of the Solid Waste Disposal Act requires the manifesting of hazardous waste, it does not mandate the form in which the manifest should be delivered. Absent legislation, would EPA be able to set up an electronic manifest system?**

Answer: Current RCRA statutory provisions do not preclude the EPA from establishing an electronic manifest, however, they do not authorize an eManifest system to be funded through user fees or ensure consistent implementation across states.

The Administration requested that Congress amend existing RCRA provisions to provide authority for user fee funding of the eManifest system, with collections and spending subject to provisions in future appropriations acts.

In addition, current RCRA authorities do not require that eManifest be allowed in all states and effective in all states on the same date. Otherwise, individual authorized states might not allow

electronic manifests to be used in their states, or, they might establish different timeframes under state law for using electronic manifests. This would result in a patchwork of varying state requirements that would undermine the efficiencies of an electronic manifest system and introduce uncertainties for the EPA and the IT contractor tasked to develop and operate the system. For example, if a hazardous waste shipment passes through two states and one such state has adopted the eManifest while the other requires only paper manifests, the eManifest system would not function as effectively and efficiently as possible.

**Q3: Could you please explain the benefit of the eManifest system for first responders and accident response by EPA's Office of Solid Waste and Emergency Response.**

Answer: Emergency response actions could occur with respect to two types of scenarios: (1) emergency response at facilities that receive and manage hazardous waste; and (2) responses to accidents involving the transport of hazardous waste. As for emergency responses at facilities that receive hazardous wastes, this is the area where the eManifest could provide significant benefit in the near term. With information about the name, location, and EPA ID Number of the facility involved in an incident, one could query the eManifest system and obtain information about the types and quantities of hazardous wastes recently delivered to the facility. These would be the materials that could be involved in an incident, and information identifying these materials and their hazard properties could be electronically shared with emergency responders.

As to responses to accidents involving transport of hazardous waste, the Department of Transportation (DOT) rules require a paper copy on the vehicle when the manifest is used as the shipping paper. The EPA will retain this requirement for one paper copy on the vehicle for as long as DOT retains such a requirement in its hazmat regulations. Moreover, should DOT alter this requirement in the future by adopting an electronic substitute for the paper copy, the EPA will coordinate with DOT so that eManifest data will be available to emergency responders consistent with DOT requirements.

## **Responses to Questions from Representative Henry A. Waxman**

**Q1: Did the lack of funding in FY 2012 impact the Agency's ability to start up an electronic manifest?**

Answer: Yes, In addition, Congress has indicated funding would not be provided for an e-Manifest system until user fees were authorized to finance the program. In FY 2012, EPA performed no work on e-Manifest system development.

**Q2: The FY 2013 EPA spending bill introduced by House Republicans would cut the Agency budget by 17% on top of the drastic cuts the Agency has experienced for the last several years. It would leave the Agency with less money in 2013 than it had in 1998. What impact would cuts that significant have on the Agency's ability to start up an electronic manifest system?**

Answer: Unless Congress appropriates sufficient funds to develop the system, EPA will be unable to develop and operate an e-Manifest system. If Congress authorizes the system and sufficient funds are appropriated, EPA will make every effort to comply with the legislative direction to develop the system within the 3-year development timeframe.





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

OCT - 2 2012

OFFICE OF CONGRESSIONAL  
AND INTERGOVERNMENTAL RELATIONS

The Honorable John Shimkus, Chairman  
Subcommittee on Environment and the Economy  
Committee on Energy and Commerce  
U.S. House of Representatives  
Washington, DC 20515

Dear Chairman Shimkus:

Thank you for your letter of August 10, 2012, requesting responses to Questions for the Record following the June 27, 2012, hearing before the Subcommittee on Environment and the Economy entitled, "the Increasing Manufacturing Competitiveness Through Improved Recycling Act and H.R. 2997, the Superfund Common Sense Act."

The responses to the questions are provided as an enclosure to this letter. If you have any further questions, please contact me or your staff may contact Carolyn Levine in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-1859.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Vaught", is positioned above the typed name.

Laura Vaught  
Deputy Associate Administrator  
for Congressional Affairs

Enclosure

cc: The Honorable Gene Green, Ranking Member  
Subcommittee on Environment and the Economy

**Questions for the Record**  
**House Subcommittee on Environment and the Economy**  
**June 27, 2012 Hearing on the Increasing Manufacturing**  
**Competitiveness Through Improved Recycling Act and**  
**H.R. 2997, the Superfund Common Sense Act**

**Questions for the Honorable Mathy Stanislaus, Assistant Administrator of the EPA**

**Representative Henry Waxman**

**Four years ago, the Energy and Commerce Committee held a hearing on hazardous substances in manure, focused on a proposed administrative exemption from reporting requirements under CERCLA and EPCRA. At that time, we heard testimony from the Government Accountability Office that the EPA did not have sufficient data to understand emissions from farms and support such an exemption. The agency has responded to that criticism by collecting data and beginning analysis, seeking comments from the Scientific Advisory Board and the public. These are positive developments, and precisely the kind of action the Committee supported in 2008.**

- 1. Was the 2008 exemption developed based on the results of the Air Compliance Agreement?**

Response: No, the EPA developed the 2008 final rule, "CERCLA/EPCRA Administrative Reporting Exemption for Air Releases of Hazardous Substances from Animal Waste at Farms," independently of the EPA's Air Compliance Agreement (with animal feeding operations). However, in the preamble of the 2008 final rule the EPA indicated that after completion of the National Air Emissions Monitoring Study (which is part of the Air Compliance Agreement) and the development and publication of emission estimating methodologies, the agency intends to review the monitoring study's results and consider if the thresholds for the EPCRA reporting exemption are appropriate.

- 2. Is the EPA considering revising the 2008 exemption, and would that revision take into account the results of the Air Compliance Agreement?**

Response: Yes, the EPA filed a motion asking the U.S. Court of Appeals for the D.C. Circuit to remand the 2008 final rule back to the agency for reconsideration after industry and environmental groups sued the agency over the rule. The court granted the EPA's motion in October 2010. The agency is now reconsidering the 2008 final rule, during which we will take into consideration the results of the National Air Emissions Monitoring Study as well as comments and concerns expressed by the industry and environmental groups.

- 3. Will the concerns from the agricultural community that led to adoption of the 2008 exemption be addressed by any potential revisions to the exemption?**

Response: The EPA intends to examine all relevant information as we move forward. Stakeholder input is an important part of developing any future policy.

**4. Will any revisions be promulgated through a transparent public process?**

Response: Yes, the EPA intends to promulgate any revisions to the 2008 final rule through a notice and comment rulemaking process.

**5. If H.R. 2997 were enacted, what impact would the legislation have on the agency's ability to complete the transparent public revision process, and the agency's ability to utilize the data produced under the Air Compliance Agreement?**

Response: While enactment of H.R. 2997 would not impact the EPA's ability to complete a transparent, public rulemaking process, it would impact potential agency substantive revisions to the 2008 final rule, including whether the EPA could utilize the emissions data gathered from the National Air Emissions Monitoring Study.

**6. Regarding the discussion draft on information gathering on recycling and recovery, testimony focused on the costs of implementing the legislation and the effectiveness of a voluntary data collection. You testified that implementation would cost \$800,000 per year, and would take longer than provided in the legislation. How much would it cost the agency, in total, to implement the legislation, and what would be a more reasonable timeline for development of a useful report?**

Response: As you noted, the EPA believes data collection and associated activities would cost the agency approximately \$800,000 per year. The EPA also estimates that it would take approximately four years for the EPA to develop and issue the data request and collect and analyze the submitted data.

**During the fourth panel of the hearing, questions were raised about the requirements of section 311(f) of the Clean Water Act, a statute that is outside of the Committee's jurisdiction. The suggestion was made that section 311(f) allows for cleanup cost recovery, rendering the requirements of CERCLA redundant.**

**7. Section 311 applies to releases of oil and substances designated as hazardous under the Clean Water Act, which designation is limited to substances whose release into navigable waters may affect natural resources. Would all substances designated as hazardous under Superfund be covered by the provisions of Section 311?**

Response: No, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) defines hazardous substances as those either designated through regulation or designated under other environmental statutes. One such statute is the Clean Water Act (CWA). However, there are other statutes that have substances that may or may not be identified as CWA hazardous substances. For example, biphenyl is a Clean Air Act (CAA) hazardous air pollutant and CERCLA hazardous substance, but not a CWA hazardous substance.

**8. Section 311 applies to discharges into navigable waters. Would contamination of drinking water sources that are not navigable be covered?**

Response: No, section 311 covers only those discharges or substantial threats of discharges into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the

waters of the contiguous zone, or in connection with activities of the Outer Continental Shelf Lands Act or the Deepwater Port Act of 1974, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States. It does not cover other discharges, even if they affect drinking water sources.

- 9. The Supreme Court has recently interpreted the Clean Water Act to significantly reduce the geographic areas historically covered by the Clean Water Act. Would the Supreme Court's interpretation also significantly limit the geographic area for which relief under section 311 could be sought?**

Response: Generally, yes. Relief under section 311 is limited to the discharges identified in section 311. The Supreme Court's interpretation of the term "navigable waters" under section 502 of the Clean Water Act is controlling.

- 10. Is it correct that recovery under section 311 is limited to the costs of containment and removal of the oil or hazardous substance from "the water and shorelines"? Does the same limitation apply to cost recovery under Superfund?**

Response: Liability for cost recovery under section 311(f) is for removal of a discharge of hazardous substances within the scope of, and in violation of, section 311(b)(3). By contrast, liability under CERCLA extends to all releases and threatened releases of CERCLA hazardous substances to the environment.

- 11. Is it correct that section 311(f) does not allow cost recovery against owners or operators if a discharge resulted from an act of a third party? Does the same limitation apply to cost recovery under Superfund?**

Response: A person is not liable under either CERCLA or section 311(f) for pollution caused solely by a third party's act or omission. Both CERCLA and section 311 provide subrogation rights for parties to assert contribution claims against a third party for pollution caused by that third party's act or omission.

- 12. Is it correct that while section 311(f) allows the Federal government to recover cleanup costs, it does not provide the same ability to municipalities or private parties conducting cleanups?**

Response: Yes, section 311 provides for liability for cost recovery only to the United States.

- 13. Is it correct that liability under section 311(f) is capped unless the United States can show that the discharge resulted from willful negligence or willful misconduct?**

Response: Yes.

- 14. Given these limitations, is Superfund redundant to section 311(f) of the Clean Water Act?**

Response: No. CERCLA generally covers releases of more substances, and into more environmental media than section 311(f) of the CWA.



Questions also arose during the fourth panel about the potential overlap between the requirements of Superfund and EPCRA and other environmental statutes.

- 15. One question concerned section 3007 of the Solid Waste Disposal Act, a provision within subtitle C of RCRA. Would the provisions of subtitle C of RCRA apply to manure, and if so, are those requirements redundant to the requirements of Superfund?**

Response: In general, RCRA section 3007 would not be a provision which applies to the storage of manure and therefore would not be considered redundant to the emissions reporting requirements under CERCLA (Superfund).

- 16. In general, do the requirements of subtitle C of RCRA complement or replicate the requirements of Superfund?**

Response: The provisions of Subtitle C of RCRA can complement CERCLA requirements. RCRA Subtitle C regulations govern the generation, transportation, and treatment, storage, or disposal of hazardous waste. RCRA Subtitle C regulations help ensure that hazardous waste is properly disposed of and help ensure that releases are prevented, thus making Superfund response unnecessary.

- 17. Do sections 7002 and 7003 of RCRA duplicate the requirements of EPCRA or Superfund?**

Response: RCRA sections 7002 and 7003 are not duplicative of EPCRA and CERCLA (Superfund) emissions reporting requirements.

- 18. Does section 112 of the Clean Air Act duplicate the requirements of EPCRA or Superfund?**

Response: No. In broad terms, Clean Air Act (CAA) section 112 does not include the response authorities of Superfund and the community-based information and emergency planning provisions of EPCRA. The "NESHAP" emission standard requirements and the accidental release rules under CAA section 112 do not apply to several of the hazardous substances regulated under CERCLA and EPCRA. Neither the NESHAP emission standard requirements nor the accidental release regulations under CAA section 112 require immediate notification of releases that exceed a CERCLA or EPCRA reportable quantity.

**In 2003, the National Academy of Sciences issued a report on air pollution from animal feeding operations. The Academy found that these operations emitted multiple pollutants including ammonia, hydrogen sulfide, particulate matter, and greenhouse gases. In 2011, the EPA estimated that over 80% of U.S. ammonia emissions were from agricultural operations.**

- 19. What are the potential health impacts of ammonia emissions?**

Response: The EPA is currently developing air emission estimating methodologies based on the National Air Emissions Monitoring Study for various types of animal feeding operations. The potential for health impacts depends entirely on the concentrations of ammonia that are emitted from these facilities. At sufficient concentrations, ammonia is known to cause irritation and burning to eyes, mouth, and lungs. Ammonia is also a precursor to ammonium nitrate and

ammonium sulfate, components of fine particulate matter. Fine particulate matter can cause serious health problems such as aggravated asthma, decreased lung function, and premature death in persons with heart or lung disease. When released, ammonia can contribute to acidification of waterways and forests and add to nitrogen over-enrichment of sensitive ecosystems.

**20. Are there other air emissions from manure that pose a public health threat?**

Response: Known emissions from animal feeding operations in addition to ammonia, include hydrogen sulfide, particulate matter, volatile organic compounds, and greenhouse gases such as nitrous oxide. These air pollutants each have the potential for human health impacts when emitted in sufficient concentrations. The EPA Science Advisory Board is currently reviewing the emission estimating methodologies, developed from the National Air Emissions Monitoring Study. These methodologies will allow the EPA to more accurately estimate the emissions of various substances and determine whether they pose significant risk at current levels.

**21. What are the risks to human health and the environment from releases into soil and water?**

Response: Please see the responses to questions 19 and 20. Further health impact information can be obtained from the Agency for Toxic Substances and Disease Registry (ATSDR) with information associated with ammonia exposure at:

<http://www.atsdr.cdc.gov/substances/toxsubstance.asp?toxid=2>

ATSDR also has information about the health impacts associated with hydrogen sulfide exposure at: <http://www.atsdr.cdc.gov/substances/toxsubstance.asp?toxid=67>

**Representative John Dingell**

**1. Has any public agency determined that a public health hazard existed based on the release of hydrogen sulfide at a dairy farm or other animal feeding operation?**

Response: Yes, in 2009, the Minnesota Department of Health and the federal agency for Toxic Substances and Disease Registry (ATSDR) found that elevated emissions of hydrogen sulfide related to manure disposal at a dairy operation (Excel Dairy) posed a public health hazard.

**2. What size city would generate waste approximately equal to the amount of animal waste generated by a CAFO, such as a large animal feeding operation or hog farm?**

Response: In a 2004 CAFO related Risk Management Evaluation, the EPA estimated that a dairy operation with 2,500 cows could produce as much waste as a city of 411,000 residents.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JAN 31 2013

OFFICE OF  
AIR AND RADIATION

The Honorable Barbara A. Mikulski  
United States Senate  
Washington, D.C. 20510

Dear Senator Mikulski:

Thank you for your letter dated August 7, 2012, co-signed by 24 of your colleagues, regarding a waiver of volume requirements under the Renewable Fuels Standard (RFS) program. The Administrator asked me to respond on her behalf.

Governors from several states and a number of organizations cited the drought conditions affecting much of the country in their request for a waiver of the national volume requirements for the RFS pursuant to the Clean Air Act. After extensive analysis, review of thousands of comments, and consultation with the Department of Agriculture (USDA) and the Department of Energy (DOE), the EPA denied the requests for a waiver in a decision published in the *Federal Register* on November 27, 2012.

The EPA recognizes that last year's drought has created significant hardships in many sectors of the economy, particularly for livestock producers. However, the agency's extensive analysis makes clear that Congressional requirements for a waiver have not been met and that waiving the RFS would have little, if any, impact on ethanol demand or energy prices over the time period analyzed.

The *Federal Register* notice contains a detailed description of the analysis the EPA conducted in conjunction with DOE and USDA, along with a discussion of relevant comments we received through our public comment process.

Again, thank you for your letter. If you have further questions, please contact me or your staff may call Patricia Haman in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2806.

Sincerely,

A handwritten signature in black ink, which appears to read "Gina McCarthy", is positioned below the word "Sincerely,".

Gina McCarthy  
Assistant Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IX  
75 Hawthorne Street  
San Francisco, CA 94105-3901

September 18, 2012

The Honorable Barbara Boxer  
United States Senate  
Attention: Maria Henderson  
70 Washington Street  
Oakland, CA 94607

Dear Senator Boxer:

Thank you for your letter of August 6, 2012, regarding the environmental concerns expressed by your constituent, (b) (6), about groundwater contamination within the community of Hinkley, California.

As you are aware, past operations at the Pacific Gas & Electric (PG&E) facility in Hinkley have resulted in significant contamination of local groundwater with hexavalent chromium, which in turn has impacted water supply wells of local residents. As noted by (b) (6), the State of California's Regional Water Quality Control Board for the Lahontan Region (Lahontan RWQCB or Board) has been actively overseeing investigation and cleanup work by PG&E since issuing its first order to PG&E in 1987. In addition to requiring cleanup, the Lahontan RWQCB has fined PG&E \$3.8 million for failure to comply with orders, and some of that money was used to provide a clean source of drinking water for local schools. The Board has also required PG&E to provide replacement water for residents whose wells are impacted by the contamination. In August 2012, the Board issued a draft Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act that describes proposed methods to clean up the contaminated groundwater, the environmental impacts of those methods, and ways to avoid or lessen those impacts. Public comments are being accepted on the draft EIR until October 19, 2012 and the Lahontan RWQCB expects to finalize the EIR and issue a new site-wide cleanup order to PG&E by early 2013.

Members of my staff have spoken recently with (b) (6) regarding his concerns and have also talked with senior management and staff at the Lahontan RWQCB about the State's efforts to address the groundwater contamination problem in Hinkley. The Board is pursuing additional work that is needed to contain the plume of contaminated groundwater. (b) (6) is correct in noting that some of PG&E's cleanup actions have had the adverse effect of increasing levels of arsenic, manganese and other naturally occurring substances that pose a risk to human health. The draft EIR evaluates whether it is possible to mitigate these side-effects of the various technologies for the cleanup of hexavalent chromium. Also, it is our understanding that the

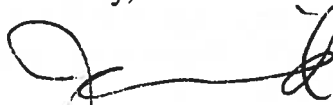


Board has sought to ensure that anyone whose water supply is potentially affected is provided with an alternate, clean source of drinking water.

The EPA has provided technical support and remains available to assist the Board. For example, EPA's groundwater experts at the National Risk Management Research Laboratory in Ada, Oklahoma, reviewed PG&E's 2010 feasibility study and provided comments to the Board. The steps the Board is now taking to evaluate cleanup options and translate the findings into a revised cleanup order to PG&E are comparable to the approach that EPA would take if we were directing the cleanup. Therefore, we will continue to track the progress of the Board and PG&E as they address the Hinkley groundwater contamination.

I trust the above information has been helpful. If you have any questions regarding the above, please contact our Congressional Liaison, Brent Maier, who can be reached at (415) 947-4256 or via e-mail at [maier.brent@epa.gov](mailto:maier.brent@epa.gov).

Sincerely,

A handwritten signature in black ink, appearing to read 'Jane Diamond', with a stylized flourish at the end.

Jane Diamond  
Director, Superfund Division



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

AUG 24 2012

THE ADMINISTRATOR

The Honorable Barbara Boxer  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Dear Chairman Boxer:

I am pleased to renew the charter of the Governmental Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Governmental Advisory Committee is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The committee will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina J. Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read "Lisa P. Jackson", written over a horizontal line.

Lisa P. Jackson

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP - 7 2012

THE ADMINISTRATOR

The Honorable Barbara Boxer  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Dear Chairman Boxer:

I am pleased to renew the charter of the Good Neighbor Environmental Board in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Good Neighbor Environmental Board is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The committee will be in effect for two years from the date the charter is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina J. Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

A handwritten signature in dark ink, appearing to read "Lisa P. Jackson", written over a horizontal line.

Lisa P. Jackson

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 27 2012

OFFICE OF THE  
CHIEF FINANCIAL OFFICER

The Honorable Harold Rogers  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am transmitting the U.S. Environmental Protection Agency's response to the May 2012 Government Accountability Office report entitled, *Oil Dispersants: Additional Research Needed, Particularly on Subsurface and Arctic Applications* (GAO-12-585). The EPA prepared this response pursuant to 31 U.S.C. 720.

The EPA generally agrees with the findings and conclusions reached by the GAO. The final report included three recommendations, one of which was addressed to the EPA.

As the GAO's final report highlights, gaps remain in our knowledge about the application and effects of subsurface injection of dispersants to underwater blowouts and of the use of dispersants in Arctic environments. The EPA believes further research, in determining the extent of lasting dispersed oil during a simulated oil blowout, comparing chemically and physically dispersed oil, would be helpful. The EPA also recommends learning more about the differences in fluorescence properties between oil and dispersed oil, so that more informed decisions are possible during a deep-sea spill response. This recommendation is predicated on the fact that the fluorescence signal of chemically dispersed oil differs significantly from undispersed or physically dispersed oil. In addition, the EPA believes research is needed on the short and long-term toxicological effects of dispersants through direct and indirect exposures.

Studying the effects of dispersant use under Arctic conditions is of great importance. The EPA is actively engaged in conducting laboratory studies on the biodegradability of oils of various weights and viscosities, with and without the use of dispersants. This research is taking place now at cold and warm temperatures. Researchers in Canada have the same objectives and needs; we are collaborating with Canadian scientists and organizations to conduct important research in this and other oil spill related areas.

In addition, the EPA is collaborating with the member agencies of the National Response Team (NRT) and the Alaska Regional Response Team (ARRT) to understand the unique aspects of different oil spill situations, locations, and times of the year in the Arctic, with respect to the authorization and use of dispersants. This effort will inform and help prioritize research needs.



## **GAO Recommendation**

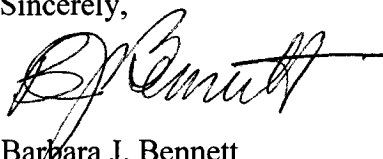
To enhance the knowledge of the effectiveness and potential environmental effects of chemical dispersants, we recommend that the Secretaries of Commerce and Interior, the Administrator of the EPA, and the Commandant of the Coast Guard direct their respective agencies, NOAA, BSEE, EPA, and Coast Guard, to coordinate and explore ways to better obtain more scientifically robust information during spills without hindering response efforts through enhancement of monitoring protocols and development of new data collection tools.

## **EPA Response**

The EPA is committed to coordinating with other agencies to better obtain more scientifically robust information during spills, by enhancing monitoring protocols and developing new data collection tools. The EPA has submitted two proposals to the Department of Interior's Bureau of Safety and Environmental Enforcement (BSEE), in response to a Broad Agency Announcement (BAA-BSEE Oil Spill Response Research- Solicitation # E12PS00012). The EPA is engaged with the Science and Technology Committee of the National Response Team, and discussions are being held to address new and improved fluorescence monitoring research and to develop a better understanding of deep-sea dispersant injection. Finally, the EPA will continue to engage the federal family, under the auspices of the Interagency Coordinating Committee on Oil Pollution Research, to enhance monitoring protocols and develop new data collection tools that can be used to obtain more scientifically robust information, without hindering response efforts, if, and when, a future spill occurs.

Thank you for the opportunity to respond to this recommendation. We appreciate the information and detailed feedback provided by the GAO concerning areas addressed in this audit. If you have any questions, please contact me or your staff may call Christina Moody, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Bennett', with a long horizontal flourish extending to the right.

Barbara J. Bennett  
Chief Financial Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

WASHINGTON, D.C. 20460

OCT - 2 2012

OFFICE OF CONGRESSIONAL AND  
INTERGOVERNMENTAL RELATIONS

The Honorable Barbara Boxer  
Chairman  
Committee on Environment and Public Works  
U.S. Senate  
Washington, DC 20510

Dear Chairman Boxer:

Thank you for your letter of April 12, 2012, to Gina McCarthy requesting responses to Questions for the Record following the March 20, 2012, hearing before the Committee on Environment and Public Works entitled, "Oversight: Review of the Environmental Protection Agency's Mercury and Air Toxics Standards for Power Plants."

The responses to the questions are provided as an enclosure to this letter. If you have any further questions, please contact me, or you staff may contact Josh Lewis in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2095.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura Vaught", is written over a horizontal line.

Laura Vaught  
Deputy Associate Administrator  
for Congressional Affairs

Enclosure

cc: The Honorable James M. Inhofe  
Ranking Member

time, has been used widely in EPA regulatory documents, as well as in the peer-reviewed literature.

First, we use atmospheric models to translate emission reductions into changes in ambient air concentrations that people breathe. Second, we use risk estimates from peer-reviewed epidemiology studies to derive a health impact function. This function estimates the number of avoided health effects associated with an improvement in overall air quality. Third, we use commonly used valuation techniques to put a dollar value on those avoided health effects.

The EPA's methods for estimating health benefits of air pollution regulations have been peer reviewed by the National Academies of Science and several panels of EPA's independent Science Advisory Board. In addition, every Regulatory Impact Analysis (RIA) is reviewed by scientists and economists within the EPA as well as other federal agencies. Every RIA is available for public review and comment along with the associated proposed regulation.

5. **Do certain hazardous air pollutants, such as mercury and lead, cause potentially subtle but still serious adverse health effects, including damage to the brain and nervous system of pregnant women, including pre-term fetuses, infants, and children?**

Exposure to mercury and/or lead, at levels much lower than that which would compromise adult health, can cause damage to the developing nervous systems of pre-term fetuses, infants and children. Pregnant women themselves are not generally at risk for damage to their own nervous systems due to mercury exposure unless they eat amounts of fish above the EPA and FDA guidelines for safe consumption by adults.

Power plants are currently the largest domestic source of mercury emissions to the air. Once mercury from the air reaches water, microorganisms can change it into methylmercury, a highly toxic form that builds up in fish. People are primarily exposed to mercury by eating contaminated fish. Methylmercury exposure is a particular concern for women of childbearing age, unborn babies, and young children, because studies have linked high levels of methylmercury to damage to the developing nervous system. This damage can impair children's ability to think and learn.

- a. **If so, can you please describe the scientific basis for the Agency's benefits estimates for reducing hazardous air pollutants that can cause such harmful effects, including whether the Agency relied on peer review science in this work?**

The EPA used peer-reviewed methods to estimate the benefits of reducing hazardous air pollutants in the MATS RIA. The EPA estimated the monetary value of just one air

**Enclosure**

**Environment and Public Works Committee Hearing  
March 20, 2012  
Follow-Up Questions for Written Submission**

Questions for Gina McCarthy

Questions from:

Senator Barbara Boxer

- 1. Do coal- and oil-burning power plants emit pollution that contains mercury, arsenic, chromium, and other hazardous air pollutants that also stick to or is part of particulate matter (“toxic soot”) emitted by the facilities?**

Yes.

- 2. Does the EPA’s mercury and air toxics rule for coal- and oil-burning power plants require these facilities to use modern and available pollution controls technologies that makes it easier to remove larger amount of hazardous air pollutants, including by making dangerous heavy metals stick to toxic soot created by the facilities?**

Yes.

- 3. If coal- and oil-burning power plants use the modern and available pollution control technologies described in EPA’s mercury and air toxics rule to reduce levels of toxic soot pollution, will these facilities also reduce their levels of mercury and other toxic air pollutants?**

Yes.

- 4. Are children and other people in communities at greater risk of suffering from harmful health effects that are easily recognizable -- such as aggravated asthma attacks, heart attacks, and premature death -- when they inhale toxic soot pollution emitted by coal- and oil-burning power plants?**

Yes.

- a. Could you please describe the scientific basis for the Agency’s answer, including whether the Agency relied on peer review science when using such information to estimate the benefits of reducing such pollution.**

The EPA uses a three-step process to estimate health benefits related to air pollution regulations. This process uses peer-reviewed models and techniques that have been refined over several decades. This approach, updated to reflect advances in research over



time, has been used widely in EPA regulatory documents, as well as in the peer-reviewed literature.

First, we use atmospheric models to translate emission reductions into changes in ambient air concentrations that people breathe. Second, we use risk estimates from peer-reviewed epidemiology studies to derive a health impact function. This function estimates the number of avoided health effects associated with an improvement in overall air quality. Third, we use commonly used valuation techniques to put a dollar value on those avoided health effects.

The EPA's methods for estimating health benefits of air pollution regulations have been peer reviewed by the National Academies of Science and several panels of EPA's independent Science Advisory Board. In addition, every Regulatory Impact Analysis (RIA) is reviewed by scientists and economists within the EPA as well as other federal agencies. Every RIA is available for public review and comment along with the associated proposed regulation.

**5. Do certain hazardous air pollutants, such as mercury and lead, cause potentially subtle but still serious adverse health effects, including damage to the brain and nervous system of pregnant women, including pre-term fetuses, infants, and children?**

Exposure to mercury and/or lead, at levels much lower than that which would compromise adult health, can cause damage to the developing nervous systems of pre-term fetuses, infants and children. Pregnant women themselves are not generally at risk for damage to their own nervous systems due to mercury exposure unless they eat amounts of fish above the EPA and FDA guidelines for safe consumption by adults.

Power plants are currently the largest domestic source of mercury emissions to the air. Once mercury from the air reaches water, microorganisms can change it into methylmercury, a highly toxic form that builds up in fish. People are primarily exposed to mercury by eating contaminated fish. Methylmercury exposure is a particular concern for women of childbearing age, unborn babies, and young children, because studies have linked high levels of methylmercury to damage to the developing nervous system. This damage can impair children's ability to think and learn.

**a. If so, can you please describe the scientific basis for the Agency's benefits estimates for reducing hazardous air pollutants that can cause such harmful effects, including whether the Agency relied on peer review science in this work?**

The EPA used peer-reviewed methods to estimate the benefits of reducing hazardous air pollutants in the MATS RIA. The EPA estimated the monetary value of just one air toxics benefit – the change in IQ for people eating some kinds of fish from some U.S. waters. In order to accomplish this analysis we use models to translate emission reductions into changes in mercury concentrations in fish. Then we use risk estimates from peer-reviewed epidemiology studies to derive an IQ impact function. This function estimates the number of avoided IQ points loss associated with a reduction in mercury

emissions. Finally, we use commonly used valuation techniques to put a dollar value on those avoided health effects.

This monetized value is an underestimate of the mercury benefits for a number of reasons:

- it does not include consumption of commercially-caught fish
- it does not include mercury exposure from fish consumption for many water bodies in the U.S., including estuaries or the Great Lakes
- IQ loss is not the most sensitive endpoint to mercury exposure, and several other neurological and developmental endpoints are considered more sensitive according to the review of the mercury risk assessment by EPA's Science Advisory Board. These endpoints were not monetized, leading to an underestimation of benefits.

At the time of the rulemaking, the EPA also did not have data to quantify the environmental impacts of mercury emissions on ecosystems and wildlife especially fish, birds, and mammals.

Additionally, MATS will reduce emissions of hazardous air pollutants that at elevated levels can cause chronic irritation of the lung, skin, and mucous membranes; chronic and acute effects on the central nervous system; chronic and acute kidney damage; and cancer. While we know these effects can occur, the EPA was unable to quantify these benefits.

**6. Could you please describe the number of states that already require coal- and oil-burning power plants to use pollution control technologies that can meet the requirements in EPA's mercury and air toxics rule?**

A number of states have multi-pollutant power plant requirements that require some or all of their plants to install technologies that would reduce many (and in some cases all) of the pollutants required by this rule. States with multi-pollutant control requirements include: Illinois, North Carolina, Georgia, Minnesota, Colorado, Delaware, New Jersey, Massachusetts and Connecticut.

**7. Could you please describe some commonly used air pollution control technologies that can meet the standards in the EPA's mercury and air toxics rule?**

- Electrostatic precipitator (ESP) - charges fly ash particles in the flue gas and collects them on a surface. Subsequently, this surface is shaken to dislodge the collected particulate matter (PM).
- Fabric filter (FF) – flue gas passes through tightly woven fabric, resulting in collection of PM on the fabric. Subsequently fabric is shaken to dislodge the collected PM.
- Wet scrubber – flue gas comes in contact with limestone or lime slurry in the scrubber; sulfur dioxide (SO<sub>2</sub>) reacts to form calcium sulfate/calcium sulfite salts, which are removed, and in some cases used for gypsum production (which has many

uses including in construction drywall and on soils to prevent fertilizer/pesticide run off).

- Activated Carbon Injection (ACI) - used to remove mercury.
- Dry Sorbent Injection (DSI) - used to remove acid gases, SO<sub>2</sub> and SO<sub>3</sub>.
- Dry scrubber – used by some power plants now for SO<sub>2</sub> reduction (and acid gas removal).

**8. Could you please describe the mercury and air toxics rule's benefits to public health and welfare and to the environment that EPA could not quantify?**

MATS will reduce emissions of hazardous air pollutants, including mercury and acid gases, that can cause chronic irritation of the lung, skin, and mucous membranes; chronic and acute effects on the central nervous system; chronic and acute kidney damage; and cancer. In addition, mercury emissions can cause environmental impacts to ecosystems and wildlife especially fish, birds, and mammals. Most of these benefits cannot be quantified at this time. The EPA also considers the unquantified benefits of the criteria pollutants reduced by MATS. These include benefits to ecosystems as acidification, eutrophication and nutrient over-enrichment are reduced due to reductions in nitrogen and sulfur deposition to ecosystems.

**a. Please explain whether EPA included non-quantifiable benefits in the Agency's final estimate of the rule's beneficial impacts?**

The EPA considered the full range of benefits, even though many are unquantified. This methodology reflects best practices for economic analysis, and follows existing law, executive orders, and current guidance from OMB.

**b. Does the failure to include such benefits likely underestimate the total benefits to public health and the environment from the rule?**

Yes, without the monetized benefits from the benefits categories in question 5a the benefits are likely underestimated. See the MATS RIA for a discussion of the unquantified benefits.

**9. Could you please describe the mercury and air toxics rule's benefits to public health and welfare and to the environment for which the EPA could not establish monetary values?**

None of the unquantified benefits listed in response to question 5a above could be monetized at this time.

**a. Please explain whether EPA included non-monetized benefits in the Agency's final estimate of the rule's beneficial impacts?**

The EPA considered the full range of benefits, even though many are unmonetized. This methodology reflects best practices for economic analysis, and follows existing law, executive orders, and current guidance from OMB.

**b. Does the failure to include such benefits likely underestimate the total benefits to public health and the environment from the rule?**

Yes, without the monetized benefits from the benefits categories in question 5a the benefits are likely underestimated. See the MATS RIA for a discussion of the unquantified benefits.

**10. Will EPA's mercury and air toxics rule level the playing field between power plants that already use modern pollution control technologies and power plants that do not use such technologies?**

Yes. Installing and using pollution control equipments increases the total operating costs of a unit. However, it also decreases pollution, thereby reducing the economic and non-economic health and environmental degradation costs to the public at large.



Senator Tom Carper

- 1. During the hearing I asked for you to explain how the EPA estimated benefits for the Mercury and Air Toxics Standards Rule. Can you provide a more detailed answer to how the agency estimated the benefits of the Mercury and Air Toxics Standards Rule? Can you explain why it is difficult to quantify the benefits of reducing air toxics?**

In the MATS RIA, the EPA estimated the monetary value of just one air toxics benefit – the change in IQ for people eating some kinds of fish from some U.S. waters. In order to accomplish this analysis we use models to translate emission reductions into changes in mercury concentrations in fish. Then we use risk estimates from peer-reviewed epidemiology studies to derive an IQ impact function. This function estimates the number of avoided IQ points loss associated with a reduction in mercury emissions. Finally, we use commonly used valuation techniques to put a dollar value on those avoided health effects.

This monetized value is an underestimate of the mercury benefits for a number of reasons:

- it does not include consumption of commercially-caught fish
- it does not include mercury exposure from fish consumption for many water bodies in the U.S., including estuaries or the Great Lakes
- IQ loss is not the most sensitive endpoint to mercury exposure, and several other neurological and developmental endpoints are considered more sensitive according to the review of the mercury risk assessment by EPA's Science Advisory Board. These endpoints were not monetized, leading to an underestimation of benefits.

The EPA also did not yet have data to quantify the environmental impacts of mercury emissions on ecosystems and wildlife especially fish, birds, and mammals.

Additionally, MATS will reduce emissions of hazardous air pollutants that can cause chronic irritation of the lung, skin, and mucous membranes; chronic and acute effects on the central nervous system; chronic and acute kidney damage; and cancer. The EPA did not have data available to quantify or monetize these health impacts at this time. As discussed in Section 4.9 of the MATS RIA, EPA's Advisory Council on Clean Air Compliance Analysis concluded that "the challenges for assessing progress in health improvement as a result of reductions in emissions of hazardous air pollutants (HAPs) are daunting...due to a lack of exposure-response functions, uncertainties in emissions inventories and background levels, the difficulty of extrapolating risk estimates to low doses and the challenges of tracking health progress for diseases, such as cancer, that have long latency periods" (U.S. EPA-SAB, 2008). Due to these methodology and data limitations, the EPA provided a qualitative analysis of the health effects associated with the HAPs anticipated to be reduced by MATS.

1. **There has been a great deal of concern that the MACT standards for new electric generating facilities are so strict that no new coal-fired generating stations can be built.**

- a. **Is it EPA's contention that new coal-fired electric generating facilities can meet the standards for new generating facilities?**

On July 20, 2012, the EPA notified petitioners of our intent to grant reconsideration of certain new source issues, including measurement issues related to mercury and the data set to which the variability calculation was applied when establishing the new source standards for particulate matter and hydrochloric acid, that may affect the new source standards. The EPA plans to issue a Federal Register notice shortly, initiating notice and comment rulemaking on the new source issues for which the Agency is granting reconsideration.

We anticipate that the focus of the reconsideration rulemaking will be a review of issues that are largely technical in nature. Our expectation is that under the reconsideration rule new sources will be required to install the latest and most effective pollution controls and will be able to monitor compliance with the new standards with proven monitoring methods. As a result, the final reconsideration rule will maintain the significant progress in protecting public health and the environment that was achieved through the rule published in February, while ensuring that the standards for new sources are achievable and measurable.

- b. **Has EPA been able to identify any existing electric generation facility that meets all of the standards for new generating facilities? If so, which ones? Would you provide this committee with a list of facilities that meet all of the standards for new generating facilities?**

The EPA does not have test data for each unit at each facility. Of the 252 electric utility steam generating units (EGUs) for which we have data provided by the companies for mercury, particulate matter, and hydrochloric acid, 68 EGUs exhibited the ability to achieve the level of all of the final emission limits for existing sources. This list of units is attached.

2. **EPA estimates that only 4.7 gigawatts (GW) of coal-fired electric generating capacity will retire as a result of its Mercury and Air Toxics Standards. Closures attributed to EPA rules have already exceeded this amount. Yet, EPA continues to deny that these closures are actually due to its actions. Do you think firms are misleading the public and their shareholders?**

Announced retirement decisions are made based on the broad array of factors that affect the economics of individual power plants, including low natural gas prices, rising coal prices, and excess capacity in light of low electricity demand, as well as costs associated

with retrofitting outdated power plants in order to reduce emissions to levels that would protect public health and the environment. The context for these announcements is very different than EPA's regulatory impact analysis of MATS, which evaluated the power sector impact of MATS in isolation. Because of the significant differences in context, comparing announced retirements to the MATS RIA projections is an apples-to-oranges comparison.

Current trends in power sector economics, particularly changing fuel prices and demand, are increasingly leading utilities to make the economic decision to announce retirements of coal-fired plants. These plants are often older, inefficient, and underutilized. Recent studies have evaluated and highlighted the underpinnings of this trend. Respected power sector consultants such as Analysis Group have found, "recent retirement announcements are part of a longer-term trend that has been affecting both existing coal plants and many proposals to build new ones. The sharp decline in natural gas prices, the rising cost of coal, and reduced demand for electricity are all contributing factors in the decisions to retire some of the country's oldest coal-fired generating units. These trends started well before the EPA issued its new air pollution rules."<sup>1</sup>

3. **EPA has now issued its Cross-State Air Pollution Rule and its Mercury and Air Toxics Rule. It has also just issued a proposed rule for New Source Performance Standards for greenhouse gas emissions from electric generation facilities. At some point, it will be finalizing its coal ash proposal and its 316(b) water intake structures rule.**
  - a. **EPA has refused to conduct an analysis of the effect all of these rules, together and cumulatively, will have on jobs, the economy, and the use of coal. Is EPA ever going to tell the American people what the effect of all of its rules together will be? Don't you think the American people deserve to be informed of how EPA's overall regulatory agenda will affect electric rates, jobs and the economy?**

The EPA performs detailed analysis of the impacts of our regulations as part of the regulatory impact analysis. The modeling approaches we use can take into account other rules, but the EPA's approach is to examine each rule individually, accounting for each rule's incremental impacts. For example, when the EPA modeled our mercury and air toxics rule using our integrated planning model, those requirements were added on top of the existing finalized air rules which are already included into the model's baseline. In the case of the final MATS rule, this included the final Cross State Air Pollution rule.<sup>2</sup>

The EPA has also conducted a peer-reviewed study of the cumulative impact of the Clean Air Act Amendments of 1990. That study showed that the benefits outweigh

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<sup>1</sup> Analysis Group, Inc. Tierney, Susan F. Ph.D., Why Coal Plants Retire: Power Market Fundamentals as of 2012

<sup>2</sup> On August 21, 2012, the U.S. Court of Appeals for the D.C. Circuit issued an opinion that would vacate the Cross State Air Pollution Rule. The EPA is still reviewing the opinion at the time of this writing and will determine the appropriate course of action when that review is complete.

the costs by 30 to 1, saving 160,000 lives and avoiding millions of cases of respiratory problems like asthma last year. The EPA will continue to look at cumulative effects of regulations as we comply with OMB's recent guidance on "Cumulative Effects of Regulations." We will also continue to look for new tools to better characterize the impacts on industries, and be mindful of impacts on small businesses.

4. **UBS warns Utility MACT plant closures could increase northern Ohio electricity capacity prices by 60% due to "severe transmission constraints" of imported replacement power; whereas EPA said prices in that region would increase just 4.5%. FERC Commissioner Moeller has expressed concern that Utility MACT reliability modeling did not properly account for transmission issues. Could this be why EPA's electricity price forecasting is so far off?**

This is not a valid comparison. Capacity auction prices represent the cost for a power plant to be available to provide power in the future. These prices provide little insight into retail electricity prices to consumers because a change in capacity price does not cause an equal change in electricity price. These costs are one component of the cost to actually generate, transmit, and deliver the electricity from power plants to consumers – much like the price a store pays in rent is only a small part of the price a consumer pays when he or she buys a product from that store. PJM<sup>3</sup> estimates that capacity costs only affect around 15% of total wholesale energy costs, which in turn account for only a portion of consumers' overall retail electricity bills (which also reflect transmission, distribution, and other costs). Therefore, any increase in capacity prices will have a much smaller effect on a consumer's electricity bill itself.

Additionally, capacity prices across PJM are declining on average – broadly indicating that robust capacity exists throughout the system. PJM Capacity market prices for 2015/2016 increased modestly (about 8%) over last year's auction, but they are actually middle-of-the-road prices when put into proper historical context. The regional price of \$136.00 is well below the historic (2010/2011) peak of \$174.29. Further, respected power sector consultants found that, "looking ahead and based on actual forward contract prices that could be purchased today for delivery of energy supply into PJM's western hub region, wholesale energy prices in 2015 would drop by over 10 percent on an inflation-adjusted basis compared to the average PJM."<sup>4</sup>

Finally, the EPA's detailed regulatory impact analysis does account for capacity prices in its assessment of the power sector's response to MATS.

5. **You have repeatedly noted that Utility MACT's supposed benefits outweigh costs by 3-to-1. You have pointed to reducing mercury as a vital public health concern. Yet,**

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<sup>3</sup> PJM Interconnection is a regional transmission organization (RTO) that coordinates the movement of wholesale electricity in all or parts of 13 states and DC, and includes the state of Ohio. For more information, see: <http://www.pjm.com/>

<sup>4</sup> Analysis Group, Inc. Tierney, Susan F. Ph.D., America's Bright Future: Cleaner Air and Affordable, Reliable Electricity



**99% of Utility MACT's claimed benefits are actually so-called "PM<sub>2.5</sub> co-benefits" that have nothing to do with mercury. In fact, the Utility MACT, itself, says "[i]t is important to note that the PM<sub>2.5</sub> co-benefits reported here contain uncertainty." Why doesn't EPA also point out these facts when Agency officials make grand claims about Utility MACT's benefits?**

While MATS is designed to reduce air toxics, the pollution control equipment we expect power plants to use would also lead to real and significant reductions in fine particle pollution. Accounting for ancillary benefits is standard practice in benefit-cost assessment since these benefits are a consequence of the rule, regardless of the rule's intended purpose. As such, the EPA estimates all of the anticipated costs and benefits associated with a regulatory action, to the extent feasible, for the purpose of determining the likely impacts, not to justify an action. This rule is expected to achieve substantial PM<sub>2.5</sub> health benefits resulting from primary PM and SO<sub>2</sub> emission reductions, and these co-benefits are thus an important category to quantify.

It is also directed by EPA's Guidelines for Preparation of Economic Analyses (p. 11-2, available at: <http://yosemite.epa.gov/ee/epa/eed.nsf/pages/Guidelines.html>):

"An economic analysis of regulatory or policy options should present all identifiable costs and benefits that are incremental to the regulation or policy under consideration. These should include directly intended effects and associated costs, as well as ancillary (or co-) benefits and costs."

Decades of scientific research has shown over and over again that PM<sub>2.5</sub> causes premature death and decreases the life expectancy of Americans. The MATS RIA contains several different types of analyses that examine the effects of the most important methodological choices on results. For example, we estimate mortality impacts using health effect estimates garnered from an EPA-sponsored expert elicitation (Roman et al. 2008). While we are unable to quantify the impact of all sources of uncertainty, we estimate the fraction of PM<sub>2.5</sub>-related benefits that would occur at or above the lowest measured level in the epidemiology studies. We also conduct sensitivity analyses examining different assumptions, including cessation lags, income growth, and risk estimates from alternate epidemiology studies. The uncertainties that are not quantifiable are listed in tables to acknowledge their possible influence on estimated benefits.

Part of the reason why co-benefits are such a large fraction of the total benefits is because the EPA was unable to quantify most of the benefits associated with reduced emissions of hazardous air pollutants. MATS will reduce emissions of hazardous air pollutants, including mercury and acid gases, which can cause chronic irritation of the lung, skin, and mucous membranes; chronic and acute effects on the central nervous system; chronic and acute kidney damage; and cancer. In addition, mercury emissions can cause environmental impacts to ecosystems and wildlife especially fish, birds, and mammals.

- 6. The Utility MACT Regulatory Impact Assessment euphemistically describes the power-plants unable to meet the rule's stringent standards as being "uneconomic"**

**to operate. Does this mean Utility MACT causes some coal generation to be uneconomic?**

EPA's detailed modeling indicated that, all else being equal, the incremental cost of MATS compliance would cause a small amount of coal-fired capacity, about 4.7 GW (less than 2 percent of all coal-fired capacity in 2015), to become uneconomic to maintain by 2015. By holding all else equal, EPA's modeling specifically evaluated the power sector's response to MATS and generated results that are attributable to MATS.

- 7. Natural gas prices are roughly at the same point now as what they've been since 2010. Yet, environmentalists and Agency officials claim power plants are closing now due to economic reasons rather than Utility MACT. If that were the case, why didn't those plant close year two years ago? What else has changed for these plants, besides EPA regulations that justifies public claims from EPA officials contradicting firms statements on the reason for plant closures?**

Recent natural gas prices have been well below 2010 levels. Natural gas prices in 2011 were the lowest annual average price for natural gas since 2002 – falling from \$4.37/mmBtu in 2010 to \$3.98/mmBtu in 2011.<sup>5</sup> The average wellhead price during the first four months of 2012 has been roughly \$2.40/tcf according to EIA.<sup>6</sup> Natural gas prices, along with rising coal prices and low electricity demand are increasingly leading utilities to announce retirements of coal-fired plants that are often older, inefficient, and underutilized. Profits made by coal plants often depend on the difference in price between baseline coal-fired generation and price-setting natural gas generation. In competitive power markets, falling natural gas prices cause wholesale electricity prices to fall and lead to lower revenues for coal-fired power plants. Rising coal prices can further narrow the margins of coal plant operators. Many coal-fired generators are feeling the squeeze, especially the older and less efficient ones.<sup>5</sup>

- 8. Has EPA analyzed the potential effect of the rule on particular fuel(s)? Does EPA anticipate favoring one fuel or fuel source over another? Will EPA share its analysis of the impact of the rule on fuels, fuel sources, the industry sectors that rely on those fuel(s), and the impact on the national economy?**

The EPA's detailed analysis of MATS included analysis of the impacts of MATS on fuels used to generate electricity as well as the broader economic impact of the rule. These assessments are available in chapters 3 and 6 of the MATS Regulatory Impact Analysis, respectively.

- 9. Utility MACT proponents, including EPA, have repeatedly said that early operator plant closure announcements are vital to ensuring reliability while transitioning to Utility MACT. But it seems like every time a utility announces plant closures due to EPA regulations, it instantly comes under attack.**

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<sup>5</sup> Analysis Group, Inc. Tierney, Susan F. Ph.D., Why Coal Plants Retire: Power Market Fundamentals as of 2012

<sup>6</sup> <http://www.eia.gov/dnav/ng/hist/n9190us3m.htm>

- a. **How can EPA tell utilities to announce closures early on, and then attack those same utilities for saying something that EPA doesn't want to hear?**

The EPA is not attacking utilities for announcing retirement plans. The EPA and other independent observers see power sector economics, outside of EPA's rules, playing the primary role in retirement decisions, and a transparent and constructive dialogue regarding announced retirements and the impacts of environmental regulation should not be misconstrued as an attack on utilities.

- b. **What will be the cost to reliability of EPA's public relations campaign to deny the impact of Agency regulations?**

The EPA is not engaged in a public relations campaign to deny the impact of Agency regulations.

**10. In the run-up to finalizing Utility MACT, Regional Transmission Organizations and FERC staff repeatedly warned EPA that the proposed rule's reliability assessments were seriously flawed. In fact, PJM Interconnection said the rule could close 11 to 14 GW of generation in its operating region, and MISO identified another 13 GW in its region. Yet not only did EPA keep its low-ball retirement projection in the final rule, the Agency actually responded to these experts concerns by cutting its nationwide retirement projection in half from about 10 GW to 5 GW.**

- a. **Does EPA believe it is more qualified than the RTO's to determine the impact of regulations on power-plants?**

EPA's projections with regard to expected retirements attributed specifically to the MATS rule decreased between the proposal and final stages primarily because the Cross State rule<sup>7</sup> was finalized in the interim and thus became part of the baseline for the final MATS rule analysis. As was made clear in the documentation for the final MATS rule, the total projected retirements attributed to the two rules together changed little between proposal and final. The EPA has a collaborative relationship with RTOs and FERC staff. We have listened to their concerns and have incorporated the specific technical inputs they provided into our regulatory impact analysis for the MATS rule. There are substantial differences between the assessments referenced in the question and EPA's MATS regulatory impact analysis. MISO's assessment, for example, evaluated the impact of power sector economics including low electricity demand and low natural gas prices alongside multiple EPA rules at once (most of which were not yet final). This is very different than EPA's regulatory impact analysis of MATS, which evaluates the power sector impact of MATS in isolation. Because of the significant differences between these assessments, comparing the results is an apples-to-oranges comparison.

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<sup>7</sup> On August 21, 2012, the U.S. Court of Appeals for the D.C. Circuit issued an opinion that would vacate the Cross State Air Pollution Rule. The EPA is still reviewing the opinion at the time of this writing and will determine the appropriate course of action when that review is complete.

- b. **How did EPA's reliability analysis find less impact from Agency regulations across the country than transmission experts found in just one region? Will you commit EPA to take steps to address the errors in your modeling?**

See response to question 10.a.

- c. **According to Commissioner Wellinghoff, since at least last March, FERC staff have suggested to EPA that the Agency consult regional planning authorities in forecasting reliability. Did EPA not meet with PJM and MISO regarding retirements, or did the Agency simply choose to ignore transmission reliability experts on the issue?**

The EPA met with PJM and MISO and incorporated the specific technical inputs they provided into our regulatory impact analysis of MATS.

- d. **In your testimony, you say EPA is holding "dialogues" with Regional Transmission Organizations. Does that "dialogue" include any listening? What specific impact on the final rule or your analysis of the impact of Utility MACT did**

The EPA had a productive exchange with RTOs in developing the MATS rule, both before and after finalization of the MATS rule. As mentioned above, the EPA incorporated the specific technical inputs they provided into our regulatory impact analysis. Additionally, the EPA took the RTOs' comments into account in developing a the December 16, 2011 memo from the Agency's Office of Enforcement and Compliance Assurance, which discusses a clear pathway for units that are shown to be critical for reliability to obtain a schedule with up to one additional year to achieve compliance with MATS. The EPA believes there will be few, if any situations, in which this pathway will be needed. In coordination with FERC and DOE, the EPA is engaged in regular communication with the RTOs with regard to issues related to the implementation of MATS.

11. **How do you define the term "generally" as it applies to the general ability to install the necessary pollution control equipment? Do you agree that the term implies a level of uncertainty? Does that uncertainty raise issues for how energy-intensive industries – the U.S. manufacturing sectors that rely on energy inputs as a power source and in some cases as a feedstock – will be affected?**

There is substantial evidence that companies can comply with this rule using existing technologies. Over 65 units have demonstrated the ability to meet all of the existing-source standards; over 175 have demonstrated the ability to meet the existing-source Hg standard; over 560 have demonstrated the ability to meet the existing-source PM standard; and over 175 have demonstrated the ability to meet the existing-source acid gas standard. Based on EPA's analysis, we do not believe that this rule will adversely impact energy-intensive industries.



**12. EPA concurrently released a memorandum with the Utility MACT describing how utilities with reliability-critical power-plants unable to comply Utility MACT deadlines can apply for an additional year under an administrative order.**

**According to the memo, “an [administrative order] cannot be issued under Section 113(a) prior to the MATS compliance date,” but “EPA intends . . . to give the owner/operator as much advance written notice as practicable” about whether the Agency will issue an administrative order.**

- a. Doesn’t it seem unfair to write a regulation that forces utilities into non-compliance before providing those utilities relief to keep the lights on? Can you explain how this is reasonable?**
- b. If you can’t tell a plant owner now whether they’ll get the extra time they need, and whatever you tell them now isn’t binding anyway, and they can still be sued by someone else for being out of compliance, how do you seriously think that anyone is going to start lengthy retrofits now with that uncertainty?**
- c. Would Administrative Orders necessary for the additional year protect utilities from being sued by environmentalists under the Clean Air Act? If not, would EPA commit to defending such utilities sued in such a manner?**

The EPA believes that all affected sources will be able to comply with the MATS within the maximum three year compliance period required by Section 112(i)(3) of the CAA – by April 16, 2015 - and, as applicable, the one year extension permitted under Section 112(i)(3)(B) – by April 16, 2016.

Nonetheless, in light of the EPA’s commitment to achieving compliance with the MATS while ensuring electric reliability, the EPA’s Office of Enforcement and Compliance Assurance issued a memorandum discussing the EPA’s intended approach regarding the use of administrative orders (“AOs”) under CAA Section 113(a) with respect to sources that must operate in noncompliance with the MATS rule for up to one additional year to address a specific and documented reliability concern (the “MATS Enforcement Policy”). The MATS Enforcement Policy can be accessed at: <http://www.epa.gov/compliance/resources/policies/civil/erp/mats-erp.pdf>. As reflected in the preamble to the final rule and in the MATS Enforcement Policy, the EPA believes there will be few, if any, situations in which an AO will be needed.

The EPA expects that owners/operators will begin compliance planning early to meet the statutorily required April 16, 2015 (or 2016, as applicable) MATS compliance date. Early notice and planning can discourage delays in coming into compliance, encourage timely action to avoid or mitigate reliability concerns, and minimize the need for issuance of AOs of the type described in the MATS Enforcement Policy. Although pursuant to Section 113(a) of the Clean Air Act, an AO can only be entered after noncompliance occurs, and although the EPA generally does not speak in

advance to the intended scope of its enforcement efforts, the EPA recognizes the need for advance planning with regard to the future availability of any reliability critical EGUs to operate as needed to maintain electric reliability. Thus, as reflected in the MATS Enforcement Policy, where the owner/operator has timely submitted a complete request for an AO and has provided appropriate cooperation, the EPA intends to give the owner/operator as much advance written notice as practicable of the Agency's plans with regard to such an AO.

While an AO does not provide a legal shield from third party lawsuits, as a practical matter, we think the incentive to bring such a suit is low. If a third party did bring a citizen suit, at most it could seek injunctive relief, civil penalties and attorneys' fees. It would be very difficult for a third party lawsuit to proceed to judgment in the one-year time frame of an AO, and thus it is unlikely that a plaintiff could obtain any meaningful injunctive relief. Any penalties awarded in such a suit go to the U.S. Treasury, not the plaintiff. In evaluating the merits of the suit and determining whether to impose conditions or penalties in addition to those in an AO, a court would consider a range of factors in making its own determination about the appropriate relief, if any, including: the length of the violation, the public interest (including the need to maintain the reliability of the electric system), the conditions imposed by the EPA under the AO (e.g., injunctive conditions, such as operational restraints and pollution mitigation measures), whether the EPA has assessed a penalty, etc. As stated in the MATS Enforcement Policy, the EPA does not intend to seek civil penalties for violations of the MATS that occur as a result of operation for up to one year in conformity with an AO, unless there are misrepresentations in the materials submitted. While a court does not have to agree with the path to compliance prescribed by the EPA, we think a court would be unlikely to materially disagree. For all these reasons, the EPA believes that an AO of the type contemplated by the Enforcement Policy will discourage third party suits.

**13. Why is EPA pursuing a complex and uncertain system of Administrative Orders to extend compliance for reliability-critical units, when the President could have simply deemed reliability a national security interest and granted the extensions as necessary?**

- a. The President took the time to write a letter promising "liberal use" of extensions, wouldn't it have been easier to just have the President say reliability is a national security interest?**
- b. Does the President believe that electric reliability is not a national security interest?**
- c. Does EPA believe that electric reliability is not a national security interest?**

We assume that your questions refer to the President's authority, under section 112(i)(4) of the Clean Air Act, to provide a temporary (renewable) exemption from a section 112 standard where the President "determines that the technology to

implement the standard is not available and that it is in the national security interests of the United States to do so.” Because this authority is conferred upon the President, not EPA, the Agency is not in a position to respond with regard to the proper interpretation or potential applicability of this provision in this context.

**14. EPA has stated on numerous occasions that the failure to take certain actions required by the deadlines established in the Boiler MACT suite of rules do not constitute violations of the Clean Air Act while the Agency reconsiders the rules.**

- a. I understand that initially, EPA verbally informed the regulated community that, if necessary, it would be issuing a 90-day Administrative Stay of the Boiler MACT rules. EPA stated in its proposed reconsideration of the Boiler Area Source Rule that it “could” administratively stay the effectiveness of the area source rule for 90 days. Comments from the regulated community strongly supported that course of action. EPA’s statement related to the existing compliance deadline of March 21, 2012 for the completion of tune-up requirements at area sources. Has EPA formally issued that stay, and has it been made publicly available?**

Response: The EPA has not issued a 90-day administrative stay of the area source boiler rule to date. The Agency did issue a no action assurance in a March 13, 2012 letter to the regulated community announcing the Agency would exercise its enforcement discretion not to pursue enforcement action against sources subject to the area source boiler rule requirement to have completed a tune-up by March 21, 2012. On July 18, 2012, the EPA issued a memorandum extending the March 13, 2012 no action assurance to the requirement to file a notification of initial compliance status for sources subject to the tune-up requirement. Copies of the letter and the memorandum are available on the agency's website.

The March 13, 2012 letter is available at:

[http://www.epa.gov/ttn/atw/boiler/area\\_source\\_nna\\_2012-03-13.pdf](http://www.epa.gov/ttn/atw/boiler/area_source_nna_2012-03-13.pdf)

The July 18, 2102 memorandum is available at:

<http://www.epa.gov/ttn/atw/boiler/20120718memo.pdf>

The July 18, 2012 memorandum also provides that the March 13, 2012 no action assurance letter remains in effect until the earlier of the completion of the reconsideration or 11:59 P.M. EST on December 31, 2012.

- b. Administrator Jackson communicated with Sen. Wyden on March 5, 2012, indicating that the Agency would address Boiler MACT –related issues. Do you consider Administrator Jackson’s letter to be an indication that all related deadline issues would be addressed, or some specific subset of those deadline issues?**

Response: The EPA is still in the process of analyzing the data submitted in response to the proposed reconsideration rule, and also of ensuring coordination of this rule with related rulemakings. Thus, EPA's administrative process is continuing at this time. The EPA does intend to address issues related to the compliance deadline for existing major source boilers in its final action.



**Senator David Vitter**

- 1. EPA has stated on numerous occasions that the failure to take certain actions required by the deadlines established in the Boiler MACT suite of rule do not constitute violations of the Clean Air Act while the Agency reconsiders the rules.**
  - a. I understand that initially, EPA verbally informed the regulated community that, if necessary, it would be issuing a 90-day Administrative Stay of the Boiler MACT rules. EPA stated in its proposed reconsideration of the Boiler Area Source Rule that it “could” administratively stay the effectiveness of the area source rule for 90 days. Comments from the regulated community strongly supported that course of action. EPA’s statement related to the existing compliance deadline of March 21, 2012 for the completion of tune-up requirements at area sources. Has EPA formally issued that stay, and has it been made publicly available?**

Please see response to Senator Inhofe Question #14a.

- 2. With respect to the Utility Mercury and Air Toxics (MATs) rule, EPA has stated that, “[It] has concluded that 4 years should generally be sufficient to install the necessary emission control equipment, and DOE has issued analysis consistent with that conclusion. President Obama has pointed out that the Clean Air Act “also provides the EPA with flexibility to bring sources into compliance over the course of an additional year, should unusual circumstances arise that warrant such flexibility.”**
  - a. How do you define the term “generally” as it applies to the general ability to install the necessary pollution control equipment? Do you agree that the term implies a level of uncertainty? Does that uncertainty raise issues for how energy-intensive industries – the U.S. manufacturing sectors that rely on energy inputs as a power source and in some cases as a feedstock – will be affected?**

Please see response to Senator Inhofe Question #11.

- b. Has EPA analyzed the potential effect of the rule on particular fuel(s)? Does EPA anticipate favoring one fuel or fuel source over another? Will EPA share its analysis of the impact of the rule on fuels, fuel sources, the industry sectors that rely on those fuel(s), and the impact on the national economy?**

Please see response to Senator Inhofe Question #8.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 28 2012

OFFICE OF THE  
CHIEF FINANCIAL OFFICER

The Honorable Harold Rogers  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am transmitting the U.S. Environmental Protection Agency's response to the May 2012 Government Accountability Office report entitled, *Nonpoint Source Water Pollution: Greater Oversight and Additional Data Needed for Key EPA Water Program* (GAO-12-335). The EPA prepared this response pursuant to 31 U.S.C. 720.

To help protect the quality of the nation's water resources, the GAO made three recommendations, two for the EPA and one for the United States Department of Agriculture.

**GAO Recommendation**

To strengthen the EPA's implementation of its responsibilities under the Clean Water Act's section 319 nonpoint source pollution control program, we recommend that the Administrator of the EPA take the following two actions:

- provide specific guidance to the EPA's 10 regional offices on how they are to fulfill their oversight responsibilities, such as how to review states' plans for project feasibility and criteria to ensure that funded projects have characteristics that reflect the greatest likelihood of effective implementation and tangible water quality results, and
- in revising section 319 guidelines to states, and in addition to existing statutorily required reporting measures, emphasize measures that (1) more accurately reflect the overall health of targeted water bodies (e.g., the number, kind, and condition of living organisms) and (2) demonstrate states' focus on protecting high-quality water bodies, where appropriate.

**EPA Response**

Currently, the EPA is undertaking a series of Section 319 Nonpoint Source Management Program reforms that align well with the GAO recommendations. In November 2011, the EPA completed the *National Evaluation of the Clean Water Act Section 319 Program* study<sup>1</sup>. Appendix C of this study outlines a number of potential section 319 program enhancements. We are moving forward this year

<sup>1</sup> <http://www.epa.gov/owow/NPS/pdf/319evaluation.pdf>

with several of these program revisions which are aimed at strengthening the strategic focus of state nonpoint source programs, providing more consistent review of state programs nationally, and improving our ability to document the progress and success of the section 319 program. We will be revising our (2003) *Nonpoint Source Program and Grants Guidelines for States and Territories* in November 2012<sup>2</sup> for use in fiscal year 2013 and beyond.

Additionally, as part of an Agency Water Quality Priority Goal for FY 2012-2013, the EPA has committed that 50 percent of states will revise their nonpoint source programs by September 30, 2013.

By November 2012, we will be providing guidance to states and the EPA regions on updating nonpoint source program plans. By March of 2013, the EPA will also provide guidance to the EPA regions on conducting annual progress determinations of states' nonpoint source programs each year, increasing national consistency in the conduct of these reviews.

The specific elements of the EPA's section 319 program reform efforts that respond to the GAO recommendations are described below.

(1) Provide Specific Guidance to EPA Regional Offices on Oversight

The GAO's first recommendation for the EPA is to provide guidance to the EPA regional offices on how they are to fulfill their oversight responsibilities. In response, the EPA will take the following actions.

- By November 2012, the EPA will provide guidance to the EPA regions and states on updating their nonpoint source program plans, *Key Components of an Effective State Nonpoint Source Management Program*. This guidance will provide more detailed information than the *Nonpoint Source Program and Grants Guidelines for States and Territories* on the recommended content of state nonpoint source management programs for states to consider when updating their programs. An updated, comprehensive state nonpoint source program is important so the EPA can ensure that section 319 funding, technical support and other resources are directed in an effective and efficient manner to support state efforts to address water quality issues on a watershed basis.
- EPA's revised *Nonpoint Source Program and Grants Guidelines for States and Territories* will include specific guidelines for states on updating their nonpoint source programs. For example, EPA expects to provide a timeframe for state nonpoint source management program updates. The *Key Components of an Effective State Nonpoint Source Management Program* guidance will be included as an appendix to the revised *Nonpoint Source Program and Grants Guidelines for States and Territories*.
- For use in FY 2013, the EPA will provide guidance by March 2013 to the EPA regions on conducting annual determinations of states' progress in implementing their nonpoint source programs.
- Based on the GAO's raising the issue of project selection practices, during FY 2013, the EPA will engage the states and the EPA regions to identify current project selection practices, assess whether there are best practices, and if so incorporate these into section 319 program operations as appropriate in FY 2013.

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<sup>2</sup> 68 FR 60653 <http://www.gpo.gov/fdsys/pkg/FR-2003-10-23/pdf/03-26755.pdf>

## (2) Review Section 319 Program Measures

The GAO's second recommendation to the EPA is to emphasize measures that (1) more accurately reflect the overall health of targeted water bodies, and (2) demonstrate states' focus on protecting high quality water bodies, where appropriate. In response, the EPA will take the following actions.

- The current (2003) section 319 grant guidelines are focused on restoring impaired waters. While we expect that restoration of impaired waters will continue to be a key feature of the section 319 grant program, we are actively considering ways to provide greater emphasis on protecting high quality waters and will address this issue when we revise the grant guidelines.
- In FY 2013, the EPA will engage the EPA regions and states in an effort to either revise national program measures for the section 319 nonpoint source program, and/or more fully utilize current national water program measures to better track and report nonpoint source program successes. The EPA will consider ways to better measure incremental water quality improvements, as well as a way to allow states to demonstrate successes in protecting high quality and threatened water bodies.

Thank you for the opportunity to respond to this recommendation. We appreciate the information and detailed feedback provided by the GAO concerning areas addressed in this audit. If you have any questions, please contact me or your staff may call Christina Moody, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Bennett', written over a horizontal line.

Barbara J. Bennett  
Chief Financial Officer





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 28 2012

OFFICE OF THE  
CHIEF FINANCIAL OFFICER

The Honorable Joseph I. Lieberman  
Chairman  
Committee on Homeland Security and Governmental Affairs  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

I am transmitting the U.S. Environmental Protection Agency's response to the July 2012 Government Accountability Office report entitled, *IT Cost Estimation: Agencies Need to Address Significant Weaknesses in Policies and Practices* (GAO-12-629). The EPA prepared this response pursuant to 31 U.S.C. 720.

To help improve federal government cost estimating practices, the GAO made two recommendations to several federal agencies including the EPA, and a third recommendation to the United States Department of Defense.

**GAO Recommendations**

To address weaknesses identified in agencies' policies and practices for cost estimating, we are making the following recommendations:

We recommend that the Secretaries of Agriculture, Commerce, Homeland Security, Labor, and Veterans Affairs, the Attorney General, and the Administrator of the Environmental Protection Agency direct responsible officials to modify policies governing cost estimating to ensure that they address the weaknesses that we identified.

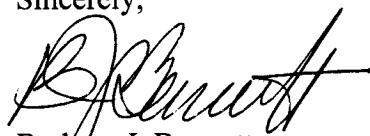
We also recommend that the Secretaries of Agriculture, Commerce, Homeland Security, Labor, and Veterans Affairs, the Attorney General, the Administrator of the Environmental Protection Agency, and the Director of the Pension Benefit Guaranty Corporation direct responsible officials to update future life-cycle cost estimates of the system acquisition programs discussed in this report using cost-estimating practices that address the detailed weaknesses that we identified.

## **EPA Response**

The EPA recognizes the GAO's comment that "agency policies did not require cost-estimating best practices." We believe that the *GAO Cost Estimating Guide: Best Practices for Developing and Managing Capital Program Costs*, GAO-09-3SP (Washington, DC: March 2009) is a valuable resource. In recognition of the GAO's comment, the EPA will update its Systems Life Cycle Management procedures, as suggested. We anticipate that the revised SLCM procedure will have concluded the agency formal review in accordance with the EPA's Chief Information Officer Policy Review Process and will be ready for approval by the end of the calendar year 2012.

Thank you for the opportunity to respond to this recommendation. We appreciate the information and detailed feedback provided by the GAO concerning areas addressed in this audit. If you have any questions, please contact me or your staff may call Christina Moody, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Bennett', with a long horizontal flourish extending to the right.

Barbara J. Bennett  
Chief Financial Officer



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SEP 28 2012

OFFICE OF THE  
CHIEF FINANCIAL OFFICER

The Honorable Harold Rogers  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am transmitting the U.S. Environmental Protection Agency's response to the July 2012 Government Accountability Office report entitled, *IT Cost Estimation: Agencies Need to Address Significant Weaknesses in Policies and Practices* (GAO-12-629). The EPA prepared this response pursuant to 31 U.S.C. 720.

To help improve federal government cost estimating practices, the GAO made two recommendations to several federal agencies including the EPA, and a third recommendation to the United States Department of Defense.

**GAO Recommendations**

To address weaknesses identified in agencies' policies and practices for cost estimating, we are making the following recommendations:

We recommend that the Secretaries of Agriculture, Commerce, Homeland Security, Labor, and Veterans Affairs, the Attorney General, and the Administrator of the Environmental Protection Agency direct responsible officials to modify policies governing cost estimating to ensure that they address the weaknesses that we identified.

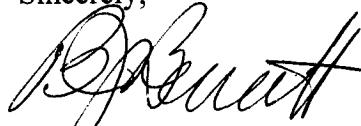
We also recommend that the Secretaries of Agriculture, Commerce, Homeland Security, Labor, and Veterans Affairs, the Attorney General, the Administrator of the Environmental Protection Agency, and the Director of the Pension Benefit Guaranty Corporation direct responsible officials to update future life-cycle cost estimates of the system acquisition programs discussed in this report using cost-estimating practices that address the detailed weaknesses that we identified.

## **EPA Response**

The EPA recognizes the GAO's comment that "agency policies did not require cost-estimating best practices." We believe that the *GAO Cost Estimating Guide: Best Practices for Developing and Managing Capital Program Costs*, GAO-09-3SP (Washington, DC: March 2009) is a valuable resource. In recognition of the GAO's comment, the EPA will update its Systems Life Cycle Management procedures, as suggested. We anticipate that the revised SLCM procedure will have concluded the agency formal review in accordance with the EPA's Chief Information Officer Policy Review Process and will be ready for approval by the end of the calendar year 2012.

Thank you for the opportunity to respond to this recommendation. We appreciate the information and detailed feedback provided by the GAO concerning areas addressed in this audit. If you have any questions, please contact me or your staff may call Christina Moody, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-0260.

Sincerely,

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Barbara J. Bennett  
Chief Financial Officer





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 28 2012

OFFICE OF THE  
CHIEF FINANCIAL OFFICER

The Honorable Daniel Inouye  
Chairman  
Committee on Appropriations  
United States Senate  
Washington, D.C. 20510

Dear Mr. Chairman:

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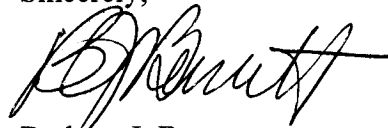
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Barbara J. Bennett  
Chief Financial Officer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 28 2012

OFFICE OF THE  
CHIEF FINANCIAL OFFICER

The Honorable Darrell Issa  
Chairman  
Committee on Oversight and Government Reform  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am transmitting the U.S. Environmental Protection Agency's response to the July 2012 Government Accountability Office report entitled, *IT Cost Estimation: Agencies Need to Address Significant Weaknesses in Policies and Practices* (GAO-12-629). The EPA prepared this response pursuant to 31 U.S.C. 720.

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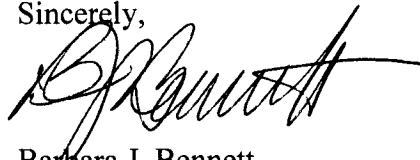
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## **EPA Response**

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Sincerely,

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Barbara J. Bennett  
Chief Financial Officer





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 28 2012

OFFICE OF THE  
CHIEF FINANCIAL OFFICER

The Honorable Jeffrey Zients  
Acting Director  
Office of Management and Budget  
Washington, D.C. 20503

Dear Mr. Zients:

I am transmitting to you the U.S. Environmental Protection Agency's responses to the recommendations set forth in the Government Accountability Office report entitled, *IT Cost Estimation: Agencies Need to Address Significant Weaknesses in Policies and Practices* (GAO-12-629). The EPA prepared these responses pursuant to 31 U.S.C. 720.

The agency reviewed the report and pursuant to 31 U.S.C. 720, enclosed are copies of the EPA responses to the Chairs of the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the House and Senate Committees on Appropriations. If you have any questions, please contact me or your staff may call Christina Moody, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-0260.

Sincerely,

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Barbara J. Bennett  
Chief Financial Officer

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 28 2012

OFFICE OF THE  
CHIEF FINANCIAL OFFICER

The Honorable Eugene Dodaro  
Comptroller General  
Government Accountability Office  
Washington, D.C. 20548

Dear Mr. Dodaro:

I am transmitting to you the U.S. Environmental Protection Agency's responses to the recommendations set forth in the Government Accountability Office report entitled, *IT Cost Estimation: Agencies Need to Address Significant Weaknesses in Policies and Practices* (GAO-12-629). The EPA prepared these responses pursuant to 31 U.S.C. 720.

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Sincerely,

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Barbara J. Bennett  
Chief Financial Officer

Enclosures



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 14 2012

THE ADMINISTRATOR

The Honorable Barbara Boxer  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Dear Chairman Boxer:

I am pleased to support the charter renewal of the National Environmental Justice Advisory Council in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The National Environmental Justice Advisory Council is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Committee will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina J. Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely,

A handwritten signature in black ink, which appears to read "Lisa P. Jackson", is written over a large, stylized, cursive flourish.

Lisa P. Jackson

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 14 2012

THE ADMINISTRATOR

The Honorable Barbara Boxer  
Chairman  
Committee on Environment and Public Works  
United States Senate  
Washington, DC 20510

Dear Chairman Boxer:

I am pleased to support the charter renewal of the Gulf of Mexico Citizen Advisory Committee in accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2. The Gulf of Mexico Citizen Advisory Committee is in the public interest and supports the U.S. Environmental Protection Agency in performing its duties and responsibilities.

I am filing the enclosed charter with the Library of Congress. The Committee will be in effect for two years from the date it is filed with Congress. After two years, the charter may be renewed as authorized in accordance with Section 14 of FACA (5 U.S.C. App. 2 § 14).

If you have any questions or require additional information, please contact me or your staff may contact Christina J. Moody in EPA's Office of Congressional and Intergovernmental Relations at (202) 564-0260.

Sincerely

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Lisa P. Jackson

Enclosure





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

SEP 28 2012

OFFICE OF THE  
CHIEF FINANCIAL OFFICER

The Honorable Harold Rogers  
Chairman  
Committee on Appropriations  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am transmitting the U.S. Environmental Protection Agency's response to the July 2012 final report, "*HUMAN CAPITAL: HHS and EPA Can Improve Practices Under Special Hiring Authorities*" (GAO-12-692). The EPA prepared this response pursuant to 31 U.S.C. 720.

To help assure that the Department of Health and Human Services and the EPA follow applicable agency policy, guidance, and internal controls for appointments and compensation under Title 42 of the US Code of Federal Regulations, the GAO made four recommendations - one for the EPA and three for the HHS. This letter addresses the recommendation addressed to the EPA.

The EPA generally agrees with the findings and conclusions reached by the GAO on the agency's appointment and compensation practices. As the GAO's report highlights, the EPA has followed its policies and guidance in operating its Title 42 program and even requires an ethics review of candidates. The agency appreciates the GAO's recognition of how the *EPA Title 42 Operations Manual* provides guidance for managers, supervisors, and human resources specialists on implementing the Title 42 program. Also, the EPA agrees with the GAO's assessment of our effort to incorporate modifications to our policy and guidance based on the recommendations made by the National Academies of Science in its 2009-2010 review of the program. In the NAS 2010 report, *The Use of Title 42 Authority at the U.S. Environmental Protection Agency*, the NAS commended the EPA's use of its Title 42 authority, concluding that the "EPA has approached the use of Title 42 authority prudently," and that the "EPA be granted expanded authority to define the number of Title 42 positions on the basis of its programmatic needs and available budget."

However, the EPA still has significant concerns with respect to the GAO's understanding of ethics requirements in the Executive Branch based on the analysis GAO included in the final report. Within the EPA, the Office of General Counsel's Ethics Team reviews every public financial disclosure report filed in the EPA, including those for Title 42 candidates. The Ethics Team identifies potential areas of financial conflict and writes to the filer. Prior to the issuance of the GAO's draft and final reports, the EPA had already instituted an additional step in its ethics process which now includes copying the Deputy Ethics Officials when cautionary memoranda are issued to public filers in their organizations. In addition, the Ethics Team is now drafting the screening arrangements for each candidate rather than relying solely on the filer or his/her DEO. The EPA believes that these measures significantly assist in

amplifying and addressing ethics issues that may arise after appointment. Previously, the filer was simply informed of his or her ethical considerations and expected to adhere to the necessary requirements like other employees. Given the nature and prominence of the Title 42 positions, the Ethics Team has added additional levels of centralized scrutiny. In addition, as a policy matter, the EPA now requires additional annual ethics training for all of its Title 42 employees, designed to focus on ethics issues of particular concern to them. This requirement is above and beyond the annual training requirement set forth at 5 C.F.R. § 2638.704. This additional mandatory ethics training has already been implemented for all of the current Title 42 employees. Finally, the Office of Research and Development, in which all the Title 42 positions reside within the EPA, has taken several steps to incorporate ethics more firmly and rigorously into its programmatic framework. For example, the ORD has designated a national ethics program coordinator to work closely with the OGC on ethics issues affecting the ORD as a whole, including arranging for the additional mandatory training and undertaking a re-examination of which Title 42 positions in the ORD should be designated as DEOs.

### **GAO Recommendation**


To help improve enforcement of ethics requirements, the Administrator of the EPA should direct the Designated Agency Ethics Official to, as part of its efforts to improve postappointment ethics oversight, develop and document a systematic approach for ensuring Title 42 employees are compliant with ethics requirements after appointment; and implement, as part of this approach, reported plans to require Title 42 employees to provide proof of compliance with ethics agreements to a designated ethics official within a reasonable timeframe after appointment.

### **EPA Response**

As described above, the OGC/Ethics sent a letter to the GAO on February 17, 2012, that outlined plans the EPA had implemented to address ethics issues that arise after appointment and to ensure that previously stipulated ethics requirements are followed. One concrete measure outlined by the EPA in that letter was to implement a process for public filers, including employees hired under the Title 42 special hiring authority, to send OGC/Ethics (in addition to their own Deputy Ethics Official) confirmation of stock divestitures, for example, and signed recusals. EPA has already implemented this process. EPA notes that the passage of the STOCK Act, Public Law 112-105, will require public filers to report periodically certain transactions, and EPA will publish them to the internet.

Thank you for the opportunity to respond to this recommendation. We appreciate the information and detailed feedback provided by the GAO concerning areas addressed in this audit. If you have any questions, please contact me or your staff may call Christina Moody, in the EPA's Office of Congressional and Intergovernmental Relations, at (202) 564-0260.

Sincerely,



Barbara J. Bennett  
Chief Financial Officer